A LAWYER'S RECOLLECTIONS

GEORGE A. TORREY

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IN AND OUT OF COURT

BY

GEORGE A. TORREY

OF THE MASSACHUSETTS BAR

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PREFACE

THACKERAY says: "Some poet has observed, that if any man would write down what has really happened to him in this mortal life he would be sure to make a good book, though he never had met with a single adventure from his birth to his burial."

I have occupied my leisure hours by recalling to mind, and recording, some matters in my experience which may not be without interest.

While there is nothing in my career which so far distinguishes it from that of any other member of the legal profession, who has followed the law for a period of half a century, as to furnish an excuse for anything in the form of an autobiography,

PREFACE

I trust that the statement of some things which have occurred during my professional life may be of interest, especially to the younger members of the legal profession, and that the account of the simple way in which people lived during my boyhood and youth may not be uninteresting to the present generation.

G. A. T.

Boston, July, 1910.

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A Lawyer's Recollections

CHAPTER I

SCHOOL DAYS

I WAS born at Fitchburg, Massachusetts, in 1838. Fitchburg, now a city of more than thirty-five thousand population, was then a town of less than three thousand inhabitants. There was no railroad in that portion of the State. Lines of four-horse coaches ran to Boston, Worcester, Keene, New Hampshire, and Brattleboro, Vermont, and four- or six-horse teams were used for the transportation of merchandise.

Fitchburg was a flourishing manufacturing town and contained a number of wealthy people, that is, wealthy for those days. The style of living was quite primitive, and there was little or no ostentation of wealth. Nearly every one was engaged

in some occupation or profession. A few had retired from business, but their style of living did not differ materially from that of other well-to-do people of the town. For instance, I cannot recall in my boyhood days any one who employed a private coachman or drove a pair of horses for pleasure. Nearly all of the prosperous inhabitants lived on the main street, and there was nothing in the size or character of their houses or in the manner of living to distinguish the men of wealth. Nearly all of the houses were of the regular pattern in New England villages, namely, — a house two stories in height, a front door in the middle, the parlor on one side and the sitting room on the other, with three chambers in the second story. The kitchen was usually in an ell in the rear of the house with a chamber above it. I doubt if in my early boyhood there was a dining room in Fitchburg. Meals were served in the sitting room.

My father was a graduate of Harvard College, a lawyer by profession, and a member of the principal law firm in the northern part of Worcester County, being a partner of Nathaniel Wood under the firm name of Torrey and Wood. He was also cashier of the Fitchburg Bank which was incorporated in 1832 and was the first bank in the northern part of Worcester County. He was not considered one of the wealthiest men of the town, but I do not recollect that our style of living differed in any way from that of the few persons who were richer than my father. Any profuseness of expenditure, or other display of wealth, would have been obnoxious to public opinion.

There was a story told in my boyhood that a retired manufacturer, who was one of the wealthiest men in town and was rather vain of his wealth, was entertaining company in his parlor which was heated, as was the custom in those days,

by an open fireplace. He called upon the servant to bring in more wood. The fuel burned in fireplaces was ordinary cord-wood. This wood was cut with an axe into lengths of about four feet. In order to prepare it for use in a fireplace, a stick of cord-wood was sawed twice so as to make three pieces out of each stick. The middle stick of course had been sawed at each end, while the two end sticks had one sawed end and the other chopped by the axe, consequently the middle stick was more symmetrical. When the servant brought the wood to replenish the fire, he brought end pieces, that is pieces sawed on one end and chopped on the other. The host was indignant and, reproving the servant, told him to go out and bring proper wood. This was considered by the other gentlemen present as rather an excess of refinement which ought not to be approved. A short time afterward one of the guests was entertaining com-

pany. He also directed the servant to bring in wood. He brought some composed entirely of the middle pieces, sawed at each end. The host told him very scornfully to take that wood out and bring proper wood. The servant returned with wood of which the ends had been painted and striped in brilliant colors. This was the method adopted to indicate that it was not considered good form in Fitchburg for a wealthy person to put on airs.

Lawyers' offices in country villages at that time were small detached buildings, one story in height, usually containing but one room. I remember when a boy of having been sent in the evening on an errand to Torrey and Wood's office and when I opened the door the room was so full of tobacco smoke it was almost impossible to see across it. Both Mr. Wood and my father were great smokers, and clients also indulged in the same practice.

The prevalent cigar in those days was a variety called Short Sixes. They were made of Cuban tobacco, a very decent tobacco, too, and were sold for a cent apiece. Over the fireplace was a cupboard which contained a large quantity of these Short Sixes to which the company helped themselves according to their pleasure. It was rumored that it was the rule of the office that any person who indulged in profanity or told an improper story should contribute a bunch of Short Sixes to the general stock, and it was also stated that the cupboard was always well supplied by these forfeits. After I arrived at maturity, I endeavored to sound my father in regard to the truth of this rumor, but for some reason I was never able to obtain any satisfactory answer in regard to it. His memory seemed to be defective upon that point.

I do not recollect that there was a single house in Fitchburg heated by a furnace

in my boyhood days. There was of course a fire in the kitchen and one in the sitting room. Few persons had fires in their sleeping rooms except in case of sickness. The room which I occupied when a child had no means of warming it. On excessively cold nights, my mother would sometimes warm the bed with a warming pan before I retired. This was a great treat and, for the purpose of enjoying it, I used to frequently pretend that I was in more feeble health than was really the case.

After graduating from college in 1822, my father came to Fitchburg and studied law in the office of John Shepley, a prominent practitioner, a very good lawyer, a thorough gentleman, dignified and honorable, and strictly adhering to the ethics of the profession. He occupied a small office, such as I have described, on the main street in Fitchburg. When absent for a short time in the course of the day, he never locked the door, but would leave

the office open so that a client could await his return. Upon one occasion a friend of Mr. Shepley's called at the office during his absence. The door being open as usual, he went in and sat down at the table. Soon after a farmer from a neighboring town came into the office to procure professional advice. Seeing this respectable gentleman sitting at the lawyer's table he took him for Mr. Shepley, with whom he was not personally acquainted. Without asking him who he was, the farmer immediately stated his business and asked his opinion on some question of law. Mr. Shepley's friend was something of a wag and thought he would have a little fun at Shepley's expense. The question of law being a very simple one, he gave an opinion and advised the farmer what course to pursue. The client asked him what his fee was, and he replied that his charge was a ninepence, that is, twelve and a half cents, which sum was duly paid.

Mr. Shepley's friend never told him of this occurrence, but a few days after another farmer came in to consult with Mr. Shepley. Mr. Shepley made the usual charge of one dollar, and the farmer said, "Squire, you gave advice to farmer so-and-so for twelve and a half cents," and he objected to paying this exorbitant sum. Several people afterwards consulted Mr. Shepley with the same idea that his fee was a ninepence, and it was a long time before Mr. Shepley ascertained the source of this error in regard to the value of his professional services.

During my boyhood Spanish coins were in general circulation. A small silver coin, worth six and a quarter cents, was called a fourpence. A Spanish real, worth twelve and a half cents, was called a ninepence. A shilling was sixteen and two-thirds cents, although I do not recollect any coins circulating at that time of that value, but the prices in nearly all of

the retail stores were always given in shillings and pence. A lady of the present day would be somewhat at a loss if the old system of reckoning the value of goods were suddenly restored. For instance, goods worth thirty-seven and a half cents a yard were always valued at two and threepence, (pronounced two and thrippence). Seventy-five cents was called four and sixpence. Thirty-three cent goods were estimated at two shillings. Every one in those days was as familiar with the price reckoned in shillings and pence as they are to-day reckoned in dollars and cents.

At that time a one-price store was unknown. This was especially true as applicable to dry goods stores. The aim of a dealer was to procure the highest price possible for the goods. The aim of the purchaser was to purchase them at the lowest possible price, and consequently during each transaction there was con-

siderable chaffering on one side and the other. I remember frequently seeing some noted contests between bright women and smart clerks. The clerk would show dress goods at four and sixpence per yard. The customer would express great scorn at this price and would perhaps offer three shillings. Then the chaffering would commence,— the salesman would come down somewhat on the price and the customer would make a slight increase in her offer. Frequently the salesman would express great contempt at the offer made and proceed to fold up the goods and put them away on the shelf in order to induce the customer to come to his figures. On the other hand, the bright customer would refuse to pay the price charged and start for the door, each party waiting for the other to give way,— the most stubborn prevailing in the contest.

All commercial transactions at that time, in country towns at least, were

conducted in the same way in which horse trades are conducted now. No one in asking a dealer the price of a horse supposes that that is the lowest price at which it can be bought. This custom prevailed during my boyhood in all branches of trade and business. If a dealer had made a great reduction from the first price suggested, he would frequently agree to close the bargain on the condition that the customer should never tell the price paid for the goods.

Many of the coins were worn so thin that the design had been entirely obliterated, and there was nothing left but a smooth piece of silver. Still, the coins would pass at their nominal value unless they were crossed, that is unless a cross had been scratched upon the smooth surface by some sharp instrument. If there was a cross upon a coin it would pass only at a reduced value. For instance, a fourpence, current at six and a quarter

cents, if crossed would pass for five cents; a ninepence, current at twelve and a half cents, would pass for ten cents. How this cross came there was then, and is now, a mystery to me, as no one could be presumed to have voluntarily reduced the value of his own coin.

All retail stores and professional offices opened at seven or eight o'clock in the morning and continued open until nine o'clock at night. The evening trade in the stores, especially in manufacturing towns, was very large.

The fire department of the town, during my boyhood, consisted of three hand engines manned by volunteer companies. It was considered the duty of every good citizen to serve for a year or two at least in one of these companies. After entering the profession and settling at Fitchburg, I joined the company attached to engine number three. Most of the young business and professional men belonged to

that company, and it was the aristocratic company of the town. The town had just purchased a new engine called Mazeppa. For the purpose of extra adornment the members of the company had personally subscribed a sum of money to have the engine ornamented with pictures of Mazeppa bound to his flying horse. The engine when in full panoply was a most gorgeous sight.

Once a month there were stated meetings of the company for practice. It was generally the custom to challenge one of the other engine companies for a contest and see which could throw water the highest. I regret to say that companies number one and two almost invariably succeeded in beating the aristocratic number three. Although we thought we had more brains and wealth than the other companies, unfortunately they had considerably more muscle.

We were obliged to turn out at an alarm

of fire at any time during the day or night, to haul the engine ourselves to the fire and to operate it sometimes for several hours. There was no fire alarm system. The alarm was given first by shouting, and as soon as possible by ringing the church bells. Many a cold winter night have I been aroused by the alarm of fire and been out on the street before the bell alarm.

It was rather an arduous service, but nobody complained of it, and we were remunerated at the munificent rate of five dollars per annum and a remission of our poll tax, but were liable to a fine for every meeting of the company and for every fire which we did not attend.

Nearly every one regularly attended church. Church services were held at ten-thirty in the morning and one-thirty in the afternoon. Churches were open on every Sunday during the year. The pastor generally had a vacation during the month of August. In some cases he

was obliged to supply the pulpit himself during that time, but the more wealthy parishes gave their minister a vacation and supplied the pulpit at their own expense.

The church edifices, then called meeting-houses, were nearly all built upon the same general pattern. A high pulpit faced the door as one entered. This pulpit was reached by a double flight of steps, one on each side. The platform, where the clergyman stood, was generally about eight or ten feet above the floor. There was a long gallery on each side of the church which was somewhat higher than the floor of the pulpit. In our church the pulpit was so high that it was inconvenient for anybody but the tallest clergymen. To obviate this difficulty there was a series of small platforms on hinges which could be raised or lowered to suit the convenience of the minister. A very tall man would not use any of them, a very short man would use them all.

I remember that my father related a story that on one occasion a very short clergyman was preaching for the first time in our church. He was unaccustomed to this arrangement of adjustable platforms. They all happened to be turned back when he entered the pulpit so that when he stood up for the service there was nothing visible except the top of his head. In order to see the congregation he was obliged to raise himself on tip-toe. He had a small, weak voice, and a most mild and inoffensive appearance. When the time for the sermon arrived, he arose from his seat and began to preach. By a strenuous effort he was just able to look over the top of the pulpit. In his weak and tremulous voice he read the text which was from Matthew 14 : 27,— "It is I, be not afraid." The effect upon the congregation in seeing this puny, little man, peeping over the top of the pulpit and endeavoring to assuage the fears of the audience was not

conducive to a calm and religious frame of mind.

My father, although a very kind hearted man, was rather strict in rearing his children, and justice was not so far tempered with mercy as to render it ineffective. What particularly disturbed him in the conduct of his children was any deviation from politeness, or anything that savored of rowdyism or coarseness.

I remember two occasions when I endured corporal punishment which, at the time, seemed to me very unjust. Judge Kinnicutt, who was at that time Judge of Probate for Worcester County, was invited to tea. It happened that we had a new caster. I doubt if the present generation knows what a caster was. It was a stand, generally round and revolving, containing cruets for condiments. There were cruets for red and black pepper, for vinegar, for mustard, and sometimes for oil. It stood in the middle of the table, so that anybody

could reach it and take the bottle which he desired. This caster to me was a magnificent work of art. I had never seen anything like it, and I doubted if any other existed quite equal to it. I had never heard of Benvenuto Cellini, but had I been familiar with his productions I should not have imagined that he could have produced so perfect a work. I felt quite proud that Judge Kinnicutt should learn that we were the possessors of such a magnificent object. When we sat down to the table I kept my eye on him to see what he would say about our new caster, but apparently he paid not the slightest attention to it. I was greatly troubled to understand the cause of his apparent inadvertence, and I thought perhaps he might be near sighted or might not possess an appreciation of works of high art, but at all events I was determined that he should not depart without appreciating the elegance of our appointments. I was

somewhat surprised that neither my father nor my mother called his attention to it. I thought it was proper that he should be aware of its existence, and I shouted to him across the table that that was our new caster and asked him how he liked it. I do not remember his reply, but I shall never forget how my father liked my remark. After the Judge departed, father invited me to the wood-shed and, without any remarks whatever, made some physical demonstrations which led me to suppose that he had been displeased at something, but what offence I had committed I had not the slightest idea. It never occurred to me that it was wrong to call the Judge's attention to our new caster any more than to a glorious sunset or any other beautiful object. After the castigation was over, I requested my father to explain to me the cause of the infliction, which he did. The object of punishment, I suppose, is not so much to cause the offender to suffer as to

prevent the recurrence of the fault. This object was accomplished by this operation, and from that day to this I do not think I ever called the attention of anybody to any possession of which I was proud, or ever took occasion to unduly display it.

The other occasion to which I refer is as follows: Nearly opposite our house stood a tin shop. In the rear of the shop was a tin-pedler's cart which, to my certain knowledge, had stood there for ten years without moving a wheel. It was old and ruinous and entirely beyond any useful service. It occurred to some of us boys that it would be a grand idea to hitch a rope to this tin-cart and, pretending it to be a fire engine, to go through the semblance of running to a fire. Some fifteen or twenty boys procured a rope and fastened it to the vehicle, and all of us took hold of it in the same way in which fire companies handled their engines, and started out on to the main street of the

village shouting fire at the top of our voices.

My father was one of the fire wardens of the town. It was the duty of these officers to attend fires. They were a sort of constabulary and had entire control of the people assembled at fires. As an insignia of office, they carried a long pole painted red with a gilt ball upon the top of it. When my father heard the alarm of fire he started out with his fire warden's pole in one hand and a leather fire bucket in the other which at that time was carried to the fires by the fire wardens and some members of the fire companies. When he came to the front gate he saw what the trouble was. He observed this tin-cart coming down the street with great speed with his hopeful son on the rope yelling fire. The first that I knew of the presence of my paternal ancestor was that I was lifted from the ground by the collar of my coat. No conversation took place be-

tween father and son, but after reaching the house there was a very vigorous performance for some minutes. The rowdyism of the affair was exceedingly disgusting to my father, but strict justice compels me to add that I think the fright and nervous disturbance which naturally occurred at the alarm of fire, and the sense of the ridiculousness of his position somewhat added to the severity of the castigation.

My mother's method of discipline was much more agreeable, — she indulged in rewards rather than in punishments. In my young days most nauseous doses of medicine were administered. There were no tablets. All medicine was in a liquid form and no attempt was made to conceal its bitter or nauseous taste. Salts and senna was a favorite prescription and I think that combination is without any question the most dreadful tasting stuff that was ever concocted. When it was

prescribed for me in my early childhood I used to rebel exceedingly against taking it. I utterly refused to swallow it and behaved in a most riotous manner, crying and kicking, and indulging in all sorts of childish insurrectionary movements. I did not indulge in these propensities when my father was present, but if I were alone with mother I knew exactly how to proceed for my own emolument. The more I rebelled the greater inducements my mother would offer for me to take the medicine, and I have sometimes made as much as a dollar by drinking a tumbler full of salts and senna. In fact, I used to rely upon this process for replenishing my exchequer.

Fitchburg was not then a Shiretown. All jury trials took place at Worcester. As there were no telegraphs, it was sometimes necessary to be ready and waiting for trial several days before the case was reached, so that the necessary expenses of a jury trial were much greater than at

the present time as witness' fees sometimes were very large.

My father was a director in the Worcester Mutual Fire Insurance Company and on the first of every month attended the Directors' Meeting in Worcester. He would hire a horse and buggy, or chaise, drive to Worcester, a distance of twenty-five miles, in the forenoon, attend the Directors' Meeting in the afternoon, and drive back to Fitchburg at night. He did not miss a single meeting for many years. Occasionally he would take me with him. When I was a small boy I used to wait in one of the rooms of the Insurance Company during the sessions of the Board of Directors. There was a large bookcase in the room, and on the top of the case were two plaster casts of a couple of small boys busily engaged in some literary pursuit. I sat and gazed for hours upon, to me, this wonderful production of art, and it used to be the height of

my ambition to become the owner of this statuary. About fifty years after, an itinerant dealer came into my office with his wares and in his collection was a reproduction of the identical statuettes which so excited my boyish adoration. They now adorn a bookcase in my office, but I do not value them as highly as I expected.

Whether people were more honest in those days or whether the criminal classes were not so ingenious, I do not know. It is unaccountable that there were so few robberies when the opportunities were so frequent and tempting. While my father was cashier of the Fitchburg Bank, it was the custom to send money to the Merchants Bank in Boston three days in the week, a trunk being sent to Boston on Monday, Wednesday and Friday and returned on the alternate days. This trunk always contained several thousand dollars in current bank bills. It was delivered

to the driver of the stage-coach at Fitchburg and he carried it under the driver's seat. The space under the seat was open and the trunk could be taken by any one who could obtain access to it. When the coach stopped for dinner, the driver would take the trunk, carry it into the tavern and put his feet on it while at the table. On some occasions there would be nobody on the top of the coach except the driver, but during the many years that this custom continued there was no larceny of this trunk and no attempt, so far as is known, on the part of anybody to steal it. When the coach arrived in Fitchburg on the return trip, the driver would take the trunk to the bank where my father was ready to receive it. There was no night watchman in the bank and the doors of the vault were of very primitive construction, and could very easily have been opened by expert thieves.

Our house was on the main street in the

village. Almost directly opposite was a primary school kept by Miss Eunice Tainter. This was the only private school in the town. It occupied a small one-story building containing but a single room into which the children were packed as closely as sardines in a box. Miss Tainter was the only teacher. Children of all ages attended. The beginners learned the alphabet, and before graduation were taught the three R's, geography, and a smattering of rhetoric and elocution.

My earliest recollection is that twice a day my mother used to pin a plaid shawl around my shoulders and stand in the doorway to watch me safely across the street on the way to school.

Miss Tainter was a justly celebrated teacher, not only for her learning and conscientious desire to improve the minds of her pupils, but also for her unique system of discipline. Corporal punishment was rarely resorted to and then only

in its mildest form. She sought to influence the pupils more by fear and shame than by physical pain. The punishments were always uniform for the same offence, therefore the guilty always knew what punishment to expect.

If a pupil was detected in a falsehood he was compelled to stand in the middle of the floor and to repeat in a loud tone of voice the inscription written in chalk upon the stovepipe which ran across the school room, viz., "God sees everything that we do and hears everything that we say." The fact that the Almighty was listening to our falsehood inspired great terror in our youthful minds. If a pupil used a vulgar word, Miss Tainter's invariable remark was that the tongue must be in a very filthy condition to utter such a word, and that it required a thorough cleansing. She would then dip a wet rag in the ashes of the stove and thoroughly wash and scrape the tongue. We all

believed that this process actually removed the cause of the impurity and that we were less likely to fall again into the same error.

But the most terrible punishment of all, reserved for hardened offenders who could not be reclaimed by any less violent procedure, was to compel the refractory pupil to sit between two scholars of the other sex. The girls occupied one side of the school room and the boys the other, but when this dreadful punishment was inflicted the boy, if he was the offender and he generally was, was compelled to sit between two girls. This was a source of great tribulation. The culprit was mortally ashamed at being consigned to the company of the other sex. Whether this punishment would be equally effective in schools attended by pupils of more mature age may be somewhat doubtful.

Once a week each advanced scholar was compelled to write a "composition" and

read it before the school. I have a distinct recollection of only one literary effort of this character, but this I remember perfectly. It certainly had some merit as it was concise, brief, and not burdened with unnecessary circumlocution. We were allowed to select our own subjects. The entire "composition" to which I refer was as follows :

"*Quinces*

"Quinces are very good. Some quinces grow on bushes and some do not."

Upon repeating this to my mother, she was anxious to know how quinces were produced that did not grow on bushes. I consulted the writer and he told me that they grew on trees.

I do not know what became of this distinguished author, but I am confident that if he ever pursued a literary career his writings were not diffuse or encumbered with unnecessary words.

The school room was heated with an open stove in the middle of the room, and bark was used as fuel. This bark was stored in a barn adjoining the school house, and was in large pieces so that it was necessary to break it up for use. This was done with wooden mallets. Miss Tainter had a device for procuring the performance of this work which, although its subtlety was not apparent to us at the time, afterwards convinced us that she was of a very foxy disposition. She had a rule that the two boys who at the close of each day's schooling had the highest marks for efficiency and good conduct should be allowed, during the next forenoon as a special treat and reward for good behavior, to visit the barn and break up the bark for that day's consumption. In this way the fuel was prepared without any expense on her part and to the great satisfaction of the successful candidates who considered themselves not

only as heroes but as having a remarkably good time in this menial occupation.

This was precisely the scheme adopted by Tom Sawyer to procure the whitewashing of his fence without an expenditure of labor by himself. When I first read the device employed by that gentleman I became satisfied that Mark Twain was a plagiarist of the most pronounced character, inasmuch as this scheme was originally adopted by Miss Tainter.

It was the custom in this school for each scholar upon his birthday, to give what was called a "treat" to the other scholars. This consisted of a gift of some small article of cake, fruit, or confectionery. The donor would pass around the basket, and each scholar would take one of the proffered gifts. I regret to say that most of the pupils, instead of making an expeditious choice, examined the articles with considerable care in order to select the best one. We always knew in advance

the date of the birthday of the scholars, and would consequently anticipate the "treat" with considerable anxiety.

I remember there was one scholar in the school whose parents were in very moderate circumstances. At the approach of her first birthday after she joined the school the scholars were in great trepidation for fear the "treat" would not come up to the ordinary standard, but, to our surprise, it was the most magnificent layout ever known, each scholar receiving an orange together with a stick of candy adorned with exceedingly brilliant colors. This was the first instance where two articles had been furnished. The donor received great applause and thereafter, like Abou Ben Adhem's, her name led all the rest.

While I was a scholar at this school, Mr. Alvah Crocker, the President of the Fitchburg Railroad Company, invited the school upon an expedition to Boston.

At that time the Fitchburg Railroad extended from Boston to Shirley, about ten miles from Fitchburg. We started early in the morning in a four-horse barge and rode to Shirley, where we took the cars for Boston. The railroad at that time terminated in Charlestown at the westerly end of Warren Bridge. Upon arriving at the station we ate lunch, which each one brought from home, and afterward formed a procession and marched across Warren Bridge to the outskirts of the city proper. Our procession must have made an immense impression upon the public who were sufficiently fortunate to witness it. I think the illustration of Cruikshank, depicting the march of the "Indigent Orphans" in Dickens' sketch of the dinner of the "Indigent Orphans' Friends' Benevolent Institution" correctly represented our appearance on the march. It was up to that time the most striking event in our lives, and our countenances indicated

that we fully appreciated the situation. After this journey we felt that we had exhausted the pleasures of travel, and had seen everything that was worth seeing on the face of the globe.

I remained at this school until I was nine years old. My playmates who attended the public schools, and they were generally children of parents who could not afford to send their children to a private school, were accustomed to taunt me with still being under the control of a female teacher as something unworthy of the manhood and intelligence of a boy of my mature age. Consequently I was anxious to attend the public school, but my parents refused their consent.

During the political campaign of 1848, when General Taylor was the Whig candidate for the Presidency, Miss Tainter, who belonged to the Peace Society and considered all fighting as grossly immoral, told the pupils that General Taylor was

a murderer. Inasmuch as my father was an enthusiastic Whig and Chairman of the Town Committee, it at once occurred to me that this sentiment would not meet with his approbation, and consequently I saw in it a loop hole by which I could escape from Miss Tainter's school. At the dinner table I told my father of the sentiments which Miss Tainter expressed concerning his candidate for the Presidency. His astonishment and anger exceeded my fondest hopes. He immediately declared that he would not allow me to be under a teacher of that character another day, fearing, I suppose, that I would become a mollycoddle if I remained longer under such influences. My mother endeavored to moderate my father's anger somewhat, and he finally so far abated his wrath that he told me on my return to the school for the afternoon session to ask Miss Tainter if, in her opinion, General Washington was a murderer, and if she an-

swered in the affirmative to leave the school immediately.

With great trepidation I returned to school in the afternoon and immediately propounded this interrogatory to Miss Tainter. My heart was fluttering, fearing that in some way she would except General Washington from her denunciation. But the good lady stood to her colors. She said that Washington was a good man in many respects and was greatly endeared to his countrymen, but truth compelled her to state that, in her opinion, he was a murderer. This was enough for me. I gathered up my books and shook the dust of that school from my feet.

Having thus escaped through the combined influences of my father's wrath and Miss Tainter's peaceful principles from remaining longer under a female teacher, I attended the grammar school kept by Charles Lamb, a celebrated and successful teacher, but whose name was strangely

misleading, affording a clear case of *lucus a non lucendo.* Although a very conscientious, worthy, and upright man, and one respected by his pupils, he was not lamb-like in disposition, but one of the most rigid disciplinarians that I ever knew. In his school there was no appeal to the moral or religious susceptibilities of the pupils, no reading of inscriptions on stovepipes or incarceration between two female pupils. The discipline in this school was by the ruler and rattan, and there were few days when they did not flourish with considerable celerity.

At the age of twelve I entered the high school at Fitchburg and, if I carried nothing else away from that school, I certainly learned one philosophical principle.

The teacher was standing with his back to the school when I took occasion to discharge a catapult, throwing a paper missile against one of the boys on the other side of the room. Unfortunately at the

time the teacher happened to be looking in a mirror which hung on one of the school room walls and detected me in the act. My punishment consisted in standing on the floor of the school room keeping my finger on the head of a nail in the floor. If any one thinks this is a slight punishment, I advise him to try it. When I was released, the principal made this remark to me: "The reason that I was able to detect your act was that I happened to be looking at the mirror and, although neither you nor I was directly in front of the looking glass, I was able to see you distinctly. This is an example of the universal law of optics, viz., that the angle of incidence is equal to the angle of reflection, and I trust you will never forget it." I never did, and I have never thought of it since without recalling my agony in holding my finger on the head of that nail.

In 1853 I entered Leicester Academy,

at that time a celebrated school, in order to fit for college. My chum and myself occupied a front room in one of the best houses in town on the main street opposite the Academy, and the price of the room and board was two dollars and twenty-five cents a week each.

There was, however, in town a palatial boarding place where the rate was three dollars a week, and after much persuasion our parents allowed us to enter this establishment. This was in a house occupied by one Billings Swan, who was employed in a card factory. The house was large and there were eight or ten students rooming there, and two or three more who had their meals at the table. The bill-of-fare here was as good as anybody could expect or reasonably demand. The whole work of the establishment, including all the cooking, washing, and care of rooms, was done by Mrs. Swan and her son. This good lady carried on this establishment

for years, although during that time she was afflicted with rheumatism so that she was quite lame. I never knew her to complain of her work, and she certainly never suffered from nervous prostration or was compelled to take vacations of several months in the summer or an occasional trip to Europe in order to keep up sufficient vitality to discharge her household duties. There were giants in those days. In order to furnish the same accommodations which this good lady and her son were able to provide would now require a cook and a corps of servants, with a corresponding increase in the price of board.

Alvan H. Washburn was the principal of the Academy. He had a genius for the management of pupils of both sexes. He adapted his punishments to each individual case. He never inflicted corporal punishment, but he had the faculty of making a scholar who violated the rules

feel about as small as it was possible for a human being to feel.

I well remember a case in which I was involved which, although the joke was upon myself, is too good to be concealed.

While the senior class in Latin was engaged in reciting to the principal in the recitation room, he was summoned to attend to callers. The recitation room was in the second story of the building. The principal went downstairs into his reception room, which was directly underneath the recitation room. As the stairs were not carpeted we thought we should undoubtedly hear him on his return and thus be notified of his approach. He was gone a long time, and for the purpose of amusement, I assumed his chair and continued the recitation, imitating his manner as well as I was able. This caused some merriment, and it was undoubtedly heard by Mr. Washburn in the room below. At all events, the first we knew of his return

he entered the room while I occupied his chair with his spectacles on my nose and in the customary attitude which he always assumed. It is needless to say that I resumed my seat about as expeditiously as possible and awaited my punishment with fear and trembling. The principal's countenance was perfectly calm, with nothing to indicate that he had noticed anything at all out of the way when he entered the room. He resumed his chair very quietly, and it seemed to me that for about three weeks there was total silence in that room. I suppose, as a matter of fact, it might have been thirty seconds. The principal then spoke very deliberately and calmly as follows :

"It is often said that history repeats itself, and the occurrence that I have just witnessed is an instance that the remark is true. When I was fitting for college, during a recitation the principal was called from the room exactly as I was called out to-day.

He was gone a long time, and one of the scholars, by way of a joke, went out and captured a goose and put it in the principal's chair. The principal, hearing some noise in the recitation room, returned so quietly that his approach was not observed. He opened the door and found a goose in his chair, as I have done to-day."

This was the whole punishment, and it was undoubtedly sufficient. If there had been a knot hole in the door, I have no doubt I could have escaped through it at the time without the slightest difficulty.

During my course at Leicester Academy politics in Massachusetts were running very high. It was at the time Anthony Burns, the fugitive slave, was carried back from Boston amid great excitement. There came near being serious riots, and it was only through a great exhibition of military strength that he was successfully removed from the Commonwealth. The excitement

of the people throughout the whole State was intense. The old line Whigs and Democrats, although they by no means approved of slavery or were in favor of the fugitive slave law, were yet determined that the laws of the United States should be enforced. The Free Soilers, on the other hand, were determined to liberate the slave if possible. So great was the excitement of the people that, on the day in which Burns was removed from the State, bells were tolled in many of the cities and towns throughout the Commonwealth, including Leicester. Some of the students who called themselves Whigs or Democrats or, in other words, whose fathers were of that political faith, considered that the triumph of law and order should be celebrated in some way. Consequently, about nine o'clock at night, two or three of us broke into the church by forcing a window and rang the bell with great vigor for several minutes. As several

of us had hold of the rope, the bell gave forth most joyous peals. But a calamity happened that we had not anticipated. It was understood by the inhabitants to be an alarm of fire. The fire company assembled dragging the fire engine, and there was great excitement throughout the whole village. We succeeded in escaping from the church and regained our rooms without detection and, so far as I know, this is the first time that history records the true perpetrators of this outrage. As the Statute of Limitations has long since barred any prosecution for this offence, it is now confessed.

In those days politics were a much more serious business than at present, and young boys were more interested in political subjects, of course following the predilections of their fathers.

My father reprimanded me in a letter for my conduct on this occasion, but I imagined that, in spite of himself, there

appeared through the whole of this reprimand a certain gleam of satisfaction that the Free Soilers in Leicester were somewhat checkmated by the unruly performances of his son.

CHAPTER II

HARVARD UNIVERSITY

1855–'61

In 1855 I entered Harvard College, having successfully passed the examination in July of that year. My principal recollection of the examination was that the weather was exceedingly hot. I wore a pair of white duck trousers. We sat upon seats newly painted black. After sitting in this position several hours, on attempting to rise I found that I was apparently tightly glued to the seat. For a few moments I thought it was easier to enter college than it was to depart, but I finally, with much difficulty, extricated myself with a black impression of the bench on the seat of my trousers.

These were the days of small things. Our class numbered one hundred upon entering college and ninety-four at graduation. The number of professors was but a small fraction of those at present. The faculty consisted of thirteen persons, and the whole corps of instructors in the undergraduate department of nineteen only.

In spite of the great progress made by the University since our day, I do not think that the graduates leave college now with a better equipment than in our time. I presume that the best scholars are better equipped than we were, but I do not think the class, as a whole, acquires such a love of literary pursuits as we had, and such an intellectual training as will enable them to enjoy the benefits of their college course in whatever sphere they may occupy. I know we studied more than the students do to-day, and our personal association with the professors

was of great service. The professors, in our day, conducted recitations in person. They knew every member of the class by name, and our intercourse with them was frequent and intimate.

All of the studies of the freshman and sophomore years were required of each student. The same was also true of all the studies of the junior and senior years excepting ancient and modern languages and mathematics. These during the last two years were elective, that is to say, each student elected two. In some studies the class was divided into four divisions, in others into two divisions only, and the whole class attended lectures, consequently each student was acquainted with every member of his class, and intimately acquainted with those in his own division. There was consequently a much stronger class feeling in those days than at present when, as I am informed, students can graduate without becoming acquainted

with some of their classmates even by sight.

The three upper classes had an exercise in themes once in four weeks. The subjects were selected by the Boylston Professor of rhetoric and oratory and were the same for each student. I remember the subject of the first theme assigned to our class in the sophomore year. It was as follows :— "The ancient Cretans, when they desired to curse a man, prayed the gods to indulge him in some evil habit." It was practically impossible for literary gentlemen of our capacity to write a theme upon this subject without indulging in unmitigated twaddle. We did not have the privilege to use the subject merely as a caption to our essay, after the manner of Montaigne, and to introduce any subject which pleased our fancy, but were obliged seriously to write upon the subject assigned. Each theme was required to be four pages in length. After struggling

for several days I made out to write three pages, and this only by coarse chirography with great spaces between the words so that each page looked more like a page from Webster's spelling book than a connected narrative. It was impossible for me to continue and extend my lucubrations onto the fourth page. What would happen to a student who should send in a theme of three pages only, I was ignorant, but I apprehended some dreadful result. In my despair I sent the theme to my father, relating to him the predicament in which I found myself, and exhorting him, through his affection for his only son, to aid me in my difficulty. My father, having graduated from Harvard College nearly forty years before, I assumed of course would be perfectly qualified to write upon any literary subject, and I supposed he could fill out the remaining page without the slightest difficulty. He afterwards informed me that

he sat up a good part of the night endeavoring to comply with my request. In his despair he consulted a volume of Hugh Blair's sermons. One sentence in my father's addendum was taken literally from Professor Blair. I have never forgotten it and can now repeat it from memory,— "The mind turns back upon itself like a bird bewildered in a stormy sky." I was rather pleased with my father's work and sent in the theme with considerable confidence. To my utter astonishment I found that Professor Child, who had criticised the whole theme with considerable vigor, had spent the most of his force upon the fourth page and especially upon the sentence cribbed from Professor Blair, who, as is well known, was a distinguished professor of rhetoric. This sentence was marked, "Vague and meaningless. How can a mind turn back upon itself?" I intended, after graduation, to inform Professor Child that he was criti-

cising a distinguished professor of rhetoric instead of the tyro who was supposed to have written the theme. Although the theme received a very low mark, I had the gratification of feeling that I could compose twaddle with greater success than my father or Professor Blair.

Each of the professors had a nickname by which he was universally known and called by the class, and these names were evidence of the endearment in which they were held. Corney Felton, Benny Peirce, Fanny Bowen, Joe Lovering, Stubby Child, Jopey Cook, were so called, not from any familiarity or contempt on the part of the students, but as pet names indicating affection and esteem.

Each one of these professors was a master in his profession and I do not think that it is any disparagement to many of their successors to say that they have not achieved a reputation equal to that of their predecessors.

Is there any mathematician in Cambridge to-day who has the national reputation enjoyed by Benjamin Peirce? Any botanist equal to Asa Gray? Greek scholars like Felton and Sophocles? Or any one who could so infuse into the students a love of English literature as Professor Child?

Professor Child was of more service to me in my profession than any teacher I ever sat under. His constant advice to the students, not to mind their style but to be clear and intelligible, was of great service to me in addressing juries and judges. I have thought of it hundreds of times, and by reason of this injunction endeavored to make myself clearly understood.

President Eliot was our tutor in mathematics during the freshman and sophomore years, and he showed the acumen and excellent judgment which has characterized his whole career by giving me

a perfect mark in mathematics during the two years' course.

Perhaps the most picturesque character in our day was Evangelinus Apostolides Sophocles, tutor of Greek. He was a native Greek, and looked exactly like the busts of the old Grecian heroes. No one knew much about his history before he appeared in this country, but there were various rumors that he had been a monk in a Greek convent. He lived in a room in Holworthy and, as I recollect, boarded himself, preparing his meals in his room. It was said that he had animal pets in the room, among others chickens and white mice. He was a kind hearted man, but a man of strong prejudices and with an immense will. When he made up his mind upon any subject, and he was very apt to make it up quickly, there was no changing him. An opinion once entertained was fixed forever.

I had an unfortunate experience the

first day that we recited to him. I was translating from the Alcestis of Euripides. At the close of my recitation, Sophocles said, — "How did you translate the last line?" I repeated it and he said, — "Some translations have it so, but it is incorrect." He marked me for that recitation "two" on a scale of "eight," "eight" being perfection, and during the whole of my college course every recitation before him was marked "two" because he believed that I had used a pony (a translation) in preparing my recitations. I had several interviews with him, and assured him that he was mistaken and that I had never seen a translation or pony in my life, but, unfortunately, I had made the same blunder in the translation of a certain word that was made in Bohns' translation, and nothing could induce Sophocles to change his mind that I was in the habit of using a pony. Consequently, for the two years that I recited to him I was

marked "two" when I should have been marked at least "seven." This materially affected my standing in the class.

Considering that I was unjustly treated, I had an interview with President Walker in regard to it. I stated the circumstances to him. He listened very attentively to my statement, and when I had finished he said that he believed every word that I had said; that my standing in other studies, and especially in other languages, would seem to indicate that the mark of "two" in Greek was unjust. President Walker said he would bring the matter before the faculty if I insisted upon it, as he thought it was due to me as a matter of justice that it should be considered by the faculty and that some relief should be granted, but he said if that was done he had no doubt that Sophocles would resign as he was very sensitive, very self-willed, and not subject to control by anybody. Dr. Walker then asked me whether, as a friend

and well wisher to the University, I would be willing to submit to this injustice rather than to deprive the college of the services of Sophocles who, he said, was probably the most eminent Greek scholar in the world. Of course there was but one answer to this appeal.

The life of the under graduate in those days was very different from what it is at present. Especially, so far as relates to the conduct and appearance of the students, there was no apparent difference between the rich and the poor. In our class were several sons of wealthy parents, but their manner of living was exactly the same as that of the remainder of the class. These students roomed in the college buildings, in a single room with a chum, in the same way that the rest of us did. I suppose they spent more money than the average in some personal matters, but there was no display, nothing of the vulgarity of wealth, no horses, no magnifi-

cent rooms or furniture, and, of course, no automobiles.

About one-half of the students roomed in the dormitories in the college yard. Some of the rooms were much more desirable than others. In Holworthy Hall there were suites containing a parlor and two bedrooms, but all the other dormitories contained only single rooms. The rent of all the rooms was the same, and rooms were assigned to the students on the following plan: — Each room had a certain number of room marks connected with it, — that is, if a person occupied a very poor room he received to his credit a large number of room marks. Rooms were drawn each year. For instance, a student entering as a freshman, and occupying one of the freshman rooms, was entitled to a certain number of marks. If he occupied a poor room, at the end of the year he had a high number of marks to his credit; if he occupied a good room, he

had but few marks. Before the end of the freshman year there would be a new drawing and assignment of rooms. Any student who desired to occupy a room in one of the college dormitories would send in his application with a list of rooms which he desired, arranged in the order of his choice. The freshman who had the highest number of room marks, that is, the freshman who had occupied the poorest room during the freshman year, was entitled to the first choice, and was sure to receive the room which he desired. If, during the sophomore year, he had selected one of the best rooms, he would, of course, accumulate but few marks during that year, and would consequently not stand so well for his choice for the junior year. Upon entering college, I was advised by a friend who had just graduated to be content with rather poor rooms during the first three years of the course in order to be sure of one of the best suites in Holworthy for the senior

year. I adopted this course and in my senior year had the second best suite in Holworthy, that is, the suite of rooms on the east end of the building on the fourth floor.

When I entered college, the rent and care of a room in one of the college dormitories was but twenty dollars a year, and good table board could be obtained for three dollars and a half per week, and the best of board for four dollars per week.

Everything of course was very much cheaper than at present. My whole expense during the four years of the college course, including board, clothing, tuition, books, amusements, and in fact all expenses of every kind and description, did not exceed the sum of twenty-eight hundred dollars, or seven hundred dollars per year, and I am confident that I spent as much as the average of the class.

Athletics did not hold so important a position in the college curriculum as at

present, and they were not so scientifically cultivated. On the first Monday of each term, it was the custom to have a football game between the Sophomore and Freshman classes upon what was called the "Delta." This is now the site of Memorial Hall. The game took place after supper, and the nobility of Cambridge used to appear as spectators. The game was not conducted upon scientific principles, and but little attention was paid to the ball. The two classes would line up in different ends of the field and, at a given signal, would proceed to assault each other, — the only endeavor was to hit somebody or something, no matter whom or how. If during the scrimmage the ball was carried from one end of the field to the other, the game was supposed to be won, but how the ball got there was a matter of considerable doubt. After this game was over there was a second game immediately held in which the seniors joined the sophomores

and the juniors joined the freshmen. This game was conducted upon more scientific principles than the initial game, but to the player of the present day would appear archaic. These games constituted about all the attention paid to football during the college course.

I do not remember that there were any baseball games played or any other sport indulged in by the students except boating. In short, I believe that in those days it was understood that the principal object of a student at Harvard University was the acquiring of knowledge and not proficiency in athletic sports.

George A. Schmitt was instructor in German. As my study of German was very limited in extent, I am unable to say whether he was a good German scholar. But I am very confident that, so far as politeness and gentlemanly instincts are concerned, he was sadly lacking. I took German as an elective in the junior year.

At the first recitation, after I had recited, the tutor said to me, with considerable scorn, — "God Almighty never intended you for a German scholar." I am inclined to think he was right in this statement, but the time and manner of his utterance were not at all pleasing. I determined not to sit under that man any longer if there was any possible means of escape. I therefore again sought the presence of President Walker. I was well aware that he was very unwilling to allow students to change their elective after they had once chosen. Upon being ushered into his presence he asked me what he could do for me. I told him that I wished to change my elective from German to Greek. He said that could not be done unless there was a very important reason for it. I replied that there was, as I had been informed that I should be thwarting the designs of the Almighty by continuing my German studies. I then told him of the theological

opinion of Instructor Schmitt. It tickled the old gentleman's fancy, as he had quite an appreciation of humor, and he said that he should be exceedingly sorry not to assist me in every way in furthering the Almighty plan, and consequently, without the slightest hesitation, consented that I should change my elective to Greek, and I migrated from the vulgarity of Schmitt to the urbanity and grace of Professor Felton.

Schmitt's predecessor was Bernard Rölker. He resigned at the end of my freshman year so that I had no personal experience with him, but the following anecdote came down to us from our predecessors. He was conducting a recitation of the Class of 1857 in which certain German exercises which the class had previously passed in were under consideration. These exercises consisted of a translation from English into German. One of the class discovered that the exercise

submitted to them was an English translation of a passage from Goethe which they were to render into German. The student, thinking that he could not improve upon Goethe's style, offered the passage from Goethe *verbatim et literatim* as his solution of the problem. It was of course obvious to the instructor that the student's German bore such a remarkable resemblance to that of Goethe that, on the doctrine of chances, it was clearly a literal transcription from that author. With his usual polite, mild manner, he said, — "Mr. F——, is this exercise all your own work?" The student replied, with an air of great gravity, — "So far as the chirography is concerned, it is, Sir."

Emile Arnault was instructor in French. He was a very intelligent man, of great courtesy and refinement, a perfect example of the true French gentleman. He had been obliged to leave France on account of some revolutionary enterprise in which

he had been engaged. He was intensely patriotic, and I regret to say that we used his fervid patriotism for the vile purpose of escaping recitations. At our request he would frequently recite the Marseillaise hymn, after which he was invariably so full of nervous excitement that he was unable to conduct the recitation and was obliged to dismiss the class. Therefore, if for any reason we wished to cut the recitation we would ask him to repeat the Marseillaise. He would always comply, and when he was through he would apologize to us for being obliged to omit the recitation, stating that he was in such a nervous condition that he could not carry it on. I have no doubt he thought we were exceedingly complaisant in so cordially complying with his request.

The chair of chemistry was filled by Professor Cook. My chief recollection of the chemical course is of the abominable smells which arose from various experi-

ments conducted by the Professor. He was an estimable gentleman. He would occasionally make some remark to a student which rightly or wrongly caused some offence, and would sometimes express his opinion on the very bad performance of a student in language which was rather vigorous. One of my classmates was reproved for a poor recitation in terms which the student thought were uncalled for. After the recitation was over he went to the Professor's desk and complained of the treatment he had received. I happened to be standing near at the time and heard the conversation. My classmate said, — "Professor Cook, I think you are entirely unjustified in the way in which you treated me during the recitation and that your remarks were insulting." Professor Cook, apparently with great surprise, said, — "What did I say that leads you to make this accusation?" My classmate rehearsed the occurrence with

much feeling, and as he was both grieved and angry he severely criticised the conduct of the Professor. Professor Cook heard him very attentively, and when he had finished the Professor merely said, — "I accept your apology." This was such a complete surprise that my classmate could not find words for utterance and the interview ceased at that point.

On one occasion when the Class of '57 was reciting, one of the students was called up and asked some question which he was entirely unprepared to answer. Instead of studying his lesson, he had spent the forenoon in a walk and his boots were covered with Cambridge clay. The question put to him was this, — "Is aluminum widely distributed in nature?" The student had not the slightest idea whether it was as prevalent as air or whether it was as scarce as radium, but replied in the affirmative, expressing the opinion that this useful substance was

widely distributed. The Professor, looking at his boots which were in plain sight as he sat in the front row, said, — "You have answered correctly, and your boots furnish proof of the truth of the answer."

Joseph Lovering was professor of mathematics and natural philosophy. During our college course the first Atlantic cable, after several ineffectual attempts, was successfully laid. While these operations were in progress Professor Lovering demonstrated to the class that it was impossible to transmit telegraphic messages across the ocean. I do not remember the ground of his belief, but we all left the lecture with the firm impression that the Atlantic cable would never succeed. The next morning the papers contained an account of the messages which had been exchanged between Queen Victoria and the President of the United States.

One of the most eccentric characters among the officers was John Langdon

Sibley, the librarian. Mr. Sibley gave his whole attention to books. He appeared never to speak or think of anything but books, and he apparently had no favorites among them. Literature to him was a democracy. There was no aristocracy, but each book was of equal importance with every other one. Any book that could be added to the college library was a treasure. Any old pamphlet or handbill, or any other conceivable object in print, was received by him with great gratitude and carefully preserved. According to Mr. Sibley, nothing was ever printed that was not of value or might not become of value in future ages, and if he had had his way everything that was printed would have been included in the Harvard Library. The students sometimes would present him with some worthless old pamphlet by way of a joke, but it was always received in entire good faith and with an appreciation of its value.

Morning prayers were at seven A. M. and evening prayers at five P. M. The attendance upon both was compulsory excepting that we were allowed to omit twenty prayers during the term. It was the custom of students to attend regularly until within the last twenty days of the term and then to cut all the remaining morning prayers so as to indulge in the luxury of remaining in bed without being obliged to respond to the Chapel bell.

Prayers were ordinarily conducted by Professor Francis and Professor Noyes of the Divinity School, although occasionally President Walker would officiate. Professor Noyes usually offered the same prayer every time that he conducted the services. The morning prayer commenced, as nearly as I can recollect, with the following stereotyped expression: "We thank thee, oh God, for the peaceful slumbers of the past night from which we have arisen

strengthened and refreshed for the labors of the day."

I remember in our sophomore year, the Class of '57 had their class supper which lasted, as is usual in such cases, during the entire night. The class entered the Chapel in the morning in the most dilapidated condition, several of the students being so exhausted that they fell asleep as soon as they sat down. The sight of the class in this somnolent condition presented rather a striking contrast to the thankfulness of the learned Divine for the refreshing slumbers of the past night, and I fear that the prayer on that morning was more conducive to merriment than to religious contemplation and improvement.

After graduating, I attended the Law School at Cambridge for three terms. It is unnecessary to state that of course I received the degree of LL.B. at the end of the course, inasmuch as the only requirement at that time for this degree was

that a person should enter his name as a student at the Law School and pay his term fees. If he did this, he received his degree. It was not necessary to spend a single day in Cambridge or to open a law book. I never knew that any one availed himself of this lax discipline but it was possible to do so. At all events no examination was necessary.

There were three professors in the Law School, — Joel Parker, Theophilus Parsons and Emory Washburn, each one of them a character as different from the others as could well be imagined, but all were good lawyers and greatly respected by the students.

Professor Parsons was wont to indulge in jokes, many of which were very good. I remember on one occasion a military company marched by the Law School with full band and drums beating. The noise was such that he was obliged to suspend his lecture. When the clamor had sub-

sided the Professor very quietly said, — "*Inter arma silent leges.*"

A portion of our instruction consisted in arguing questions of law before one of the professors in the moot courts, so called. When Professor Parsons was the presiding judge he had a stereotyped form of announcing his judgment which was delivered immediately after the argument. It ran something in this way: — "I have carefully listened to the very able arguments on both sides of this question, and have given due weight to all that has been said by the disputants, and have come to the following conclusion." He would then draw from his pocket a written opinion which he would read. I fear that he did not listen to our arguments with an unprejudiced mind.

The instruction in the Law School at that time mainly consisted of two lectures a day, one at eleven and one at twelve, and the moot courts above mentioned.

Between the lectures there was an intermission of fifteen minutes which was spent by many of the students in visiting the restaurant opposite the Law School kept by one Lyon who, on account of the color of his hair, was universally know as the "Tawny Lyon." There each student would drink a glass of half-and-half which, almost invariably, rendered us somnolent during the next lecture.

CHAPTER III

COUNTRY PRACTICE OF LAW

AFTER graduating, I entered the law firm of Wood and Bailey at Fitchburg as a student. Nathaniel Wood, the senior partner, was one of the leading lawyers in Worcester County, certainly the leading lawyer outside of the city of Worcester. He was formerly a partner of my father. Mr. Wood used to arrive at the office every morning at eight o'clock remaining until one, when he dined. Returning at two o'clock he staid until six, when he went to supper. After supper he returned to the office and never left before eight o'clock, and sometimes later, receiving clients and doing office work in the evening exactly the same as during the day. That is the way lawyers lived and worked

in 1859 and, as I said in regard to Mrs. Swan, there was very little nervous prostration nor were many long vacations required.

It was my duty in the morning before breakfast to sweep out the office and light the fire before Mr. Wood arrived at eight o'clock. I performed this duty daily while I remained a student in the office. It never occurred to me at the time that it was a degradation for a graduate of Harvard College to perform these menial duties. The result was that, like Sir Joseph Porter, I so carefully polished the handle of the big front door and performed other duties of that kind that Mr. Wood, upon the death of Mr. Bailey, offered to take me as a partner, and this offer I joyfully accepted.

I was admitted to the bar in June 1861. At that time if a student had studied three years in the Law School, or in an office of an attorney, he was admitted to the

bar without examination; otherwise an examination was necessary. There were then no bar examiners, but the examinations were conducted by one of the judges in person.

Judge Thomas Russell of the Superior Court was holding the term at Fitchburg when I applied for admission. At the adjournment of the court for the day, he called me to the Judge's desk and propounded various interrogatories which he evidently had prepared during the afternoon session of the court. I think I answered all of them correctly excepting the last. This question was an inquiry as to how far the criminal jurisdiction of the Commonwealth of Massachusetts extended over navigable waters. I had not the slightest idea, as the question never had occurred to me and I had read nothing upon the subject. I told the Judge I was unable to answer the question, as I had never considered it to be a material one,

so far as my practice was concerned, inasmuch as I proposed to practice in Worcester County and I was confident that the jurisdiction of the Commonwealth extended over the whole of that territory. The Judge thereupon stated that he thought it was safe to let me loose upon the community, and I was admitted to the bar on the following morning, and on the same day entered into partnership with Mr. Wood.

Although the firm of Wood and Bailey had the largest practice of any legal firm in Worcester County outside of the city of Worcester, they had never divided in any year net earnings of over three thousand dollars, that is, fifteen hundred dollars apiece. Mr. Wood's charge, when I went into company with him, for trying a case in the Superior Court was ten dollars a day. His charge for consultation was from one to five dollars, and I have known a fee of fifty cents to be charged

where the matter was of slight importance. For drafting deeds the price was one dollar. Wills were from two to five dollars.

During my college course, and especially while in the Law School, I had become somewhat familiar with the charges of lawyers in Boston. Soon after I was admitted to the firm, I told Mr. Wood that I thought he was charging ridiculously low prices and that he ought to increase them very materially. For instance, I suggested that he should never appear in court for less than twenty-five dollars. Mr. Wood heard me very patiently and said that if I saw fit to try the experiment he was willing to consent; that it concerned me much more than it did him because he was at that time sixty years old and it was of not much importance to him whether the business increased or decreased during the short time that he would continue in practice, but he thought the result would be that the business would be ruined. Upon

my persisting, we adopted the increased prices and the income of the office was doubled at once without any diminution of practice.

Mr. Wood, with almost unparalleled generosity, took me into the firm as an equal partner. He stated as his reason for doing so that he was of advanced age and thought he might possibly continue in practice ten or twelve years longer. If so, during the first of the period, of course I should be receiving much more than I could fairly be said to earn, but he thought that during the last portion of the period, as he was retiring from practice, I should be doing much more than half of the work. Accordingly he considered that an equal division was fair. I do not think that many persons would have considered the subject in that way, and I was always very grateful to him for his magnanimity.

As another illustration of the way in

which prices and living expenses have increased, Mr. Wood, who was married during the third decade of the nineteenth century, told me that he spent, during the first year of his married life, the sum of six hundred dollars, which included all his personal expenses of every kind and description. He kept house in one of the best houses in the town. I think he owned it at the time so that there was no house rent to pay. But the sum of six hundred dollars included his entire living expenses, — fuel, lights, provisions, the wages of one servant, clothing for himself and wife, horse hire, and whatever sums were spent for amusements and entertainment. This sum was so extravagant that it was universally understood that it exceeded the living expenses of any other couple in town, and some of the wealthy men of that period were clearly of the opinion that, for a young attorney like Mr. Wood, this expense was so exorbitant and reckless that,

in all probability, he would come to want on account of his extravagance.

Mr. Wood had beautiful white hair. A few years before I went into company with him, for some reason he began to dye his hair, and continued this practice during the rest of his life. At the next term of the court at Worcester after he had made this change in his personal appearance, at the calling of the docket on the first day of the term when a case of Mr. Wood's was reached, he rose from his seat and stated to the court that he desired to have the case continued inasmuch as his client had *died* since the last adjournment of the court. "So has his Attorney," shouted Judge Benjamin F. Thomas. The joke was so good that Judge Thomas was not called to order for this interruption.

It was a great advantage to me to enter this flourishing and long established firm as it at once put me into an extensive and

varied practice, and consequently there were few if any young lawyers in the Commonwealth who had the amount of practice that I had during the first years of my professional life.

Immediately upon my admission to the bar I was associated with Mr. Wood in the management of court cases, and was constantly brought into contact with the leading members of the bar in Worcester County from whom I met with the most courteous and encouraging treatment.

At the time of my admission to the bar, and for a long time previously, the bar of Worcester County stood very high in learning, legal ability, and in the ethics and courtesy of the profession. At that time the leading lawyers in Worcester were the firms of Bacon and Aldrich, Devens and Hoar, and Dewey and Williams.

The first named firm was composed of Peter C. Bacon and P. Emory Aldrich.

Mr. Bacon was one of the oldest practising lawyers in the county. He was an excellent lawyer who gave his whole time to his profession, an untiring student and exceedingly thorough. He seemed to be steeped in legal lore, and Fearne on Contingent Remainders and Cruise's Digest were as familiar to him as the multiplication table. His honesty and integrity were beyond question. His manners were genial without a particle of arrogance or conceit. He was not eloquent before juries, but very effective on account of the plain, practical way in which he presented his case, and especially because of his entire integrity and the utter absence of any attempt to deceive. He was a great favorite both among the bar and the public, and his practice was very large. He was exceedingly courteous and kind to younger members of the profession who frequently went to him for advice in cases in which he was not retained, and he was

always glad to give to younger counsel the benefit of his learning and experience.

His partner was P. Emory Aldrich, at that time District Attorney and afterwards Judge of the Superior Court. He was also an exceedingly able lawyer and a man of the strictest integrity. He was of a more nervous temperament than Mr. Bacon and occasionally indulged in rather severe remarks, but he had a very kind heart and never intentionally gave offence to anyone. His career as District Attorney was remarkably successful. I cannot recall a case where a guilty person escaped punishment. He had great skill in the preparation and introduction of testimony and would weave a net around a guilty defendant from which it was impossible to escape. He also seemed to have a remarkable faculty of weighing the evidence and rarely procured an indictment against a person unless there was sufficient evidence of his guilt to convict him.

The firm of Dewey and Williams was composed of Francis H. Dewey and Hartley Williams. Mr. Dewey was an admirable jury lawyer, and had great success in the trial of causes. He seemed to understand the workings of the mind of the ordinary country juror better than any lawyer at that time in practice, and was exceedingly astute in availing himself of their prejudices and habits of thought. Upon the whole, I found him the most dangerous adversary at the bar. While trying a case against him, it was unsafe to allow your attention to be diverted for a moment. While practice in Worcester County at that time was conducted with great courtesy, still it was much more of a contest of wits than it is at present. A lawyer did not consider that he was trying both sides of the case. If he appeared for the plaintiff, it was not supposed to be a part of his duty to see that the defendant came to no harm. If an attorney desired to intro-

duce testimony which he knew would probably be objected to by the other side, he did not consider it his duty to notify his opponent in advance or be sure that his opponent was giving attention to the case when the objectionable question was asked. While trying a case against Mr. Dewey it was much safer to give your undivided attention to it than to rely upon the fact that if your attention was diverted nothing prejudicial would happen during such diversion. I think he had more shrewdness in the introduction of testimony than any other member of the bar.

The firm of Devens and Hoar was composed of Charles Devens and George F. Hoar. This was a remarkably strong firm. Mr. Hoar, as is well known, was an exceedingly able lawyer, and his partner, General Devens, was not only a good lawyer but very eloquent in addressing a jury. I never tried many cases against Judge Devens because he enlisted for the war

soon after I was admitted to the bar, and not long after he returned was appointed upon the bench of the Superior Court, but while I was studying in Mr. Wood's office I frequently heard him in court. His arguments to the jury were very effective and were a great treat to the members of the bar.

Mr. Hoar's career is of course well known to everybody. As a lawyer he was exceedingly keen, both in the presentation of evidence and in arguments to the jury and the court.

Dwight Foster was Attorney General when I was admitted to the bar, and soon after was appointed to the Supreme Judicial Court so that I never had any experience in trying cases with or against him. As is well known, he was an able lawyer and a very courteous gentleman.

Another prominent lawyer was George F. Verry who had rather a remarkable career. He was originally engaged in

business and was not a college graduate. He studied law and associated himself with Henry D. Stone who at that time was mainly engaged in criminal practice. After the death of Mr. Stone, Mr. Verry gradually worked out of the criminal business into a large practice in civil cases. He could not properly be called a great lawyer, but was very successful in jury cases, never losing his temper, calm and serene under all circumstances, a perfect gentleman in his manner, and shrewd and quick to see the points of a case. He achieved great success at the bar. At first, starting under somewhat of a cloud because of the character of the cases of the firm in which he was connected, he entirely outlived this reputation, and before his decease was considered by everybody as a high and honorable gentleman who would not stoop to any tricks or subterfuges in the trial of a case. He always dressed with great nicety and taste, and

during my early practice in the county was the best dressed gentleman at the bar. I tried several cases against him and never on a single occasion did any unpleasantness occur. I do not think he had an enemy in the world, and I do not know that he ever offended anybody for a moment. During the last years of his life, he entered into partnership with the late Francis A. Gaskill, a charming man and an excellent lawyer, who was afterwards appointed to the bench of the Superior Court and recently died greatly lamented.

Soon after I was admitted to the bar, the firm of Staples and Goulding was formed, composed of Hamilton B. Staples, afterwards one of the judges of the Superior Court, and Frank P. Goulding. Nearly at the same time W. S. B. Hopkins was admitted as a partner with Peter C. Bacon, and after Mr. Staples was appointed to the bench Messrs. Goulding and Hopkins were the leading

lawyers in Worcester, and engaged in most of the important cases. They were excellent lawyers, both in the trial of jury cases and in arguments before the Supreme Court. I think the general opinion was that while they were both of them eminent Mr. Goulding was especially distinguished for his learning and ability in arguing legal questions, and Mr. Hopkins for his skill as a jury lawyer; but they were both lawyers of great ability in all branches of the profession.

One of the most picturesque characters at the bar was Matthew J. McCafferty. He was a large, portly gentleman of Irish extraction, abounding in Irish wit and humor, of a genial disposition, never losing his temper, and a great favorite in the profession. He was not a profound lawyer, and his practice was mainly confined to criminal cases. It was a treat to hear him address a jury in defence of persons indicted for the illegal sale of intoxicating

liquor. He would expend as much eloquence in defending a client for selling a glass of liquor as if he were engaged in some prominent State trial. His arguments were always amusing but not always convincing. He would perspire profusely during the trial of a case. In fact my general recollection of him is as being in a state of perennial humidity. I think when I was admitted he was the only Irish member of the bar in Worcester County. Dear old McCafferty! Peace to his ashes!

At that time arguments to the jury were more ornate than at present. It was especially considered necessary to open and close with some attempt at eloquence. Several stock quotations were almost sure to be used in certain classes of cases. For instance, in a slander case the following familiar quotation from Othello usually appeared in the closing argument of the plaintiff:

"Who steals my purse steals trash; 't is something, nothing;
'T was mine, 't is his, and has been slave to thousands;
But he that filches from me my good name
Robs me of that which not enriches him
And makes me poor indeed."

In family controversies between a parent and a child the following quotation from King Lear was rarely absent:

"How sharper than a serpent's tooth it is
To have a thankless child!"

I remember on one occasion when the effect on the jury was somewhat marred by a slip of the tongue of the defendant's attorney who quoted the passage in this way, —

"How sharper than a serpent's thanks it is
To have a toothless child!"

I can recall but two cases during all my practice as a young man when one of my seniors endeavored to snub me and, with-

out inordinate vanity, I think it may be said that in neither case was the success sufficient to warrant a repetition of the attempt.

One of these instances occurred, soon after my admission to the bar, in a trial in the Superior Court of an appeal case from a justice of the peace involving the sum of five dollars, the price of a hog, of which the title was in dispute. I appeared for the plaintiff. At the close of the evidence, instead of arguing to the jury, my opponent turned to the judge and, with a most supercilious sneer on his face, said that he did not think it was necessary to argue that case, and would submit it without argument. I did not propose to submit my case without argument, as I feared I did not have much of a case to submit as the evidence was decidedly in favor of the defendant. I therefore proceeded to argue and, in opening the case to the jury, said that I desired to apologize

for taking their time in arguing the case, inasmuch as my opponent had seemed to consider that there was so little chance of his obtaining a verdict that he had practically abandoned the case. I stated that if I had had more experience at the bar I should probably have submitted the case without argument but, being young and inexperienced, I did not dare to omit any precaution and, if they would excuse me, I would proceed to argue the case which even my opponent seemed to think was so clear that all resistance was hopeless. To my surprise and satisfaction the jury took this view of the case, and they thought my opponent had declined to argue the case, not because he considered it so strong, but because he thought it was so weak that it was useless to make any further effort to recover a verdict.

The other instance was during the argument in the Supreme Court of the case of *Winchester* v. *Howard*, 97 Mass. 303.

The defendant Howard was at variance with the plaintiff Winchester, and for many years had refused to have dealings with him of any kind or description. Once or twice, however, he had purchased property, ostensibly of another party, and discovered, after the purchase, that it was really the property of Winchester. He was laughed at and derided on this account, and it almost became a monomania with him that he would, under no circumstances, have any dealings directly or indirectly with Winchester. He had occasion to buy a pair of oxen and, in accordance with his invariable custom, he asked the ostensible owner whether Winchester was the owner or had any interest in these cattle. The ostensible owner replied in the negative. Howard bought the cattle and, as he was driving them home, he met a friend of his who said, — "You have been buying Winchester's cattle; how is this?" He there-

upon made inquiry and found that they were in fact Winchester's cattle, and that they had been put into the hands of the ostensible owner for the purpose of selling them to Howard. The next day he returned the cattle which the seller refused to receive. Winchester brought an action against Howard for the price of the cattle. The only defence was that, at the time of the alleged purchase, the cattle were represented as not being the property of Winchester, and that this representation was false, and for that reason the defendant had a right to return them.

Howard was a client of ours and immediately consulted us in regard to the matter. My partner, Mr. Wood, was rather of the opinion that the representation as to the ownership of the cattle was immaterial as the quality of the cattle was as represented and that the sale was therefore valid. Howard was eager for a fight, and said if there was the slightest chance he wanted

to defend the action. It seemed to me, and I so expressed my opinion, that there was no law in the Commonwealth of Massachusetts that compelled a man, against his will, to deal with another. Consequently we defended the action.

The judge in the Superior Court ruled against us on the ground that the representation of ownership was immaterial and we appealed to the Supreme Court.

As the excepting party, I had the opening and close of the argument. After I had finished the opening, the counsel on the other side, who was one of the leaders of the bar, instead of arguing his case, simply made a short statement as follows:

"I desire, by a simple illustration, to show the futility of this defence. There is a well-known hatter in the City of Worcester named Kettell. Suppose I had bought my hats there for a number of years and, on going to my office to-morrow morning, I should step into the store and I should

say, — 'Is Mr. Kettell still running this store?' The person in attendance says, 'Yes,' and I consequently buy a hat. I wear it home, and immediately upon my arrival at home I ascertain that Mr. Kettell sold out the night before. Have I a right to return that hat on account of breach of warranty or representation? If I have, I admit that the defendant is entitled to judgment."

The counsel then resumed his seat. I had the right to close. I stated to the court that I was very glad that the gentleman had given an illustration which he admitted to be upon all fours with the case at bar, inasmuch as a case cited in my brief decided that identical point in my favor. The case was precisely the same as that suggested by my opponent and was decided upon the ground that no one can be made to buy of another without his own assent, and that every man has the right to determine with whom he shall

enter into business relations. The verdict was set aside and the defendant obtained judgment.

As I have said, these were the only instances that I can recall where, when I was young at the bar, I was snubbed by an older lawyer.

As soon as I was admitted to the bar, I assisted my partner in the trial of cases in the Superior Court.

During the first year of our partnership, the cases of *Smith* v. *Wood, et al.*, were reached for trial in the Superior Court. The plaintiff was Henry Smith, then a manufacturer in the town of Templeton in Worcester County, afterwards President of the Home Savings Bank of Boston. He was quite an able man, very shrewd in business, and with a blunt, offhand manner which rendered him quite popular in the community. He was at that time a man of considerable means. As he began work when quite young, his early education was

somewhat neglected. He once presided at a political convention in Fitchburg. It was the custom to open political conventions with prayer. Mr. Smith called the convention to order and inquired if there was a clergyman present. There was no response. Mr. Smith then said, — "Inasmuch as there is no clergyman present, the Divine blessing will be dispensed with, and the convention will proceed to business."

The suits I refer to were two actions brought on promissory notes against the firm of M. H. Wood and Company, and several thousand dollars were involved in the suits. Inasmuch as during the time when the plaintiff furnished merchandise to the firm and these notes were given there was a change in the firm by the admission of a new partner, two actions were brought, one against the old firm and one against the new. The isues pending in the two cases were precisely the same, but it

was not then the custom to order cases of this nature tried together where the parties were not identical, consequently there were two trials. The trials lasted several days; the facts were quite complicated and the evidence conflicting.

In the first case the jury rendered a verdict in favor of the defendant. Soon after the verdict was rendered, Mr. Smith came into the office, jovial and debonair as ever, and said, — "Well, Mr. Wood, we got licked." Mr. Wood then said, — "What do you propose to do about the other case which will be in order for trial on Monday morning? The facts are precisely the same, and I doubt if there is much chance of a verdict." Mr. Smith replied, without a moment's hesitation, — "Mr. Wood, I'll tell you what to do, let George try the next case alone; he can't come out any worse than you did, and he may come out somewhat better." To my surprise my partner consented

without the slightest hesitation or any feeling of dissatisfaction. I supposed, at the time, Mr. Smith made the suggestion in jest, but I found he was in earnest. He did not make this proposition because he had any fault to find with the manner in which the case had been conducted. Mr. Wood was a very able trial lawyer, and tried the case with his usual skill, but it occurred to Mr. Smith that possibly putting a young and green attorney into the case might excite the sympathy of the jury and possibly result in a verdict for the plaintiff.

I don't think I ever was in such trepidation in my life as I was when this suggestion was made. Up to this time I had taken no part in trials except to examine some unimportant witness, Mr. Wood conducting all cross-examinations and opening and closing to the jury.

After church on Sunday, Mr. Wood went over the case with me in the office,

giving me all the suggestions which he could think of. Monday morning the second case was called in court. The counsel for the defendant was Peter C. Bacon of Worcester, at that time one of the oldest practising lawyers in the county and the leader of the Worcester bar. When the case was called, Mr. Bacon turned to me and asked where Mr. Wood was. I told him he was not coming and that I was to try the case alone. Mr. Bacon's reply was, — "I am licked as sure as a gun. The jury will be sure to decide in your favor on account of its being your first case."

The evidence was precisely the same as it had been in the previous trial.

When it came my turn to open for the plaintiff, I stated to the jury that the evidence was precisely the same as in the case tried last week, and that if the jury proposed to follow the lead of the other jury it was of course useless for me to

introduce any evidence, but if, on the other hand, they were men of independent judgments, had opinions of their own, and were not to be influenced by what somebody else had thought or somebody else had done, I should proceed to try the case with considerable confidence in the result, inasmuch as in my judgment the other verdict was wrong. The jury straightened up in their seats, and each man on the panel evidently was impressed with the opinion that he proposed to use his own judgment, and not be led by the nose by some one else.

The trial resulted in a verdict for the plaintiff, not, I presume, on account of any skill in the conduct of the case, but through the desire of the jury to show that they were men of independent judgment who were able to weigh the evidence without any regard as to the manner in which it had been weighed by some one else.

The conduct of Mr. Bacon during this

trial was delightful. There was no snubbing or assumption of superior skill or learning, but I was treated with as much courtesy as if I had been one of the leaders of the bar. During the trial he gave me much good advice. Among other things he told me never to ask for senior counsel but to try alone all cases that were brought to me, unless the client desired to retain an older man to assist me. He said if I intimated to my clients that I was not competent to try any case they would undoubtedly think that my opinion was correct, and the next time would employ somebody that was competent. I followed this suggestion during my whole professional life and never in any case asked for senior counsel, although I was pleased to have them retained if my client desired it.

Mr. Wood's conduct was equally delightful, and instead of feeling chagrined because I obtained a verdict where he had

failed, he was pleased at the result. At the close of that term of court, he told me that thereafter I must try all cases in the Superior Court alone; that he thought I was competent to do it, and he had arrived at a time of life when it was agreeable to begin to rest from his labors. From this date, I tried all jury cases alone, and after a year or two Mr. Wood retired entirely from court practice, although he retained his interest in the firm and was constantly in attendance at the office and assisted in the preparation of cases. This arrangement gave me an exceedingly large practice for so young a lawyer, and was a great benefit to me then and in after life.

Among my associates at the bar in Fitchburg was a unique character who was at times exceedingly funny, although I doubt if he was fully aware that he possessed this quality. The funniest men in the world are those that are funny and do not know it. He was a zealous church

member. Soon after the war it was the custom to make contributions of clothing for the use of the refugees, as they were called, in Kansas and other Western States. They were negroes who had escaped from the South and taken up their residence in the Northern States. They were poor and needed help. Accordingly the church with which my friend was connected made a contribution of discarded clothing to be sent to these refugees in Kansas. A large packing case was filled, and it was ready for delivery to the express company on Monday morning. At the service during the preceding Sunday, the clergyman, in his prayer, referred at great length to the refugees, and especially to the contribution for their relief which had been made by the congregation. He prayed that this box might escape all perils by sea and land in the course of the journey and finally be safely delivered to the recipients. He requested the Lord to watch over it and

to take special pains in order to insure the safe delivery of the goods. At the close of the prayer my friend remarked, in a tone which was supposed to be a whisper but was audible over a long distance,— "It seems to me a pity to trouble the Lord with such a trifling matter for the box could have been insured for fifty cents." I doubt if he ever appreciated how exquisitely funny this suggestion was, for I think he made it in good faith thinking that as a business matter the Lord should not be troubled with a fifty cent risk.

I was once associated with the same lawyer as senior counsel in a suit brought by a nurse to recover for services rendered during several months to a patient who died of cancer. During my instructions from my associate, he impressed upon me, with considerable iteration, that it was a *rose* cancer which I inferred from his anxiety to impress this matter upon my mind to be a cancer of an unusually serious

nature. While I was arguing the case to the jury in closing for the plaintiff and was in the midst of a peroration, I felt my coat tail clutched in a most violent manner. I looked around and my associate was standing behind me and whispered in a voice that could be heard all over the court room, — "Be sure and remind the jury that this was a *rose* cancer." The jury got the benefit of this suggestion from overhearing the remark of my associate, but I fear the oratorical beauties of my peroration were somewhat impaired.

I think there is no better legal training for a young man than was furnished at that time by becoming a student in an office of a leading attorney in a country town. There were no specialists in those days in the legal fraternity. A country practice included every branch of the law, both civil and criminal. A lawyer, in order to achieve success, was compelled to be efficient in real estate and commercial

law, probate and divorce proceedings, equity and common law, and, in short, in every branch of jurisprudence. There was then much more litigation upon trivial matters than at present. Legal fees were much less, and there were many persons in a community, generally of considerable means, who rather enjoyed a legal contest although the amount involved was not equal to the expense incurred.

I have been engaged in many actions of trespass to try the title to real estate where the only dispute was in regard to the boundary between two fields in the country of little value, and sometimes the strip of land which was in controversy was not worth one-tenth of the cost of the legal proceedings.

The case of *Putnam* v. *Bond*, 100 Mass. 58, and 102 Mass. 370, was tried two or three times in the Superior Court and argued twice before the full bench of the Supreme Court in order to fix the true

line between the land of the respective parties, while the whole value of the land in dispute was exhausted in the legal proceedings of half a day.

The case of *Proctor* v. *Putnam Machine Company*, 137 Mass. 159, was a long and expensive contest to determine the question whether a bank wall in the City of Fitchburg did or did not encroach seven inches upon the plaintiff's land. The plaintiff was a man of moderate means, but he considered that he had been wronged by the defendant corporation and was willing to spend a great amount of time and a large sum of money in order to maintain his rights.

In both of these cases, in which I appeared for the plaintiff, we were successful, and in neither case did the plaintiff regret the expenditure of money which was necessary in order to maintain his rights which were of very small pecuniary value.

In those days, any justice of the peace could try a civil case, and certain justices of the peace were commissioned to try criminal cases. Frequently these justices were not lawyers and the proceedings before them in some cases were rather amusing.

I recall a case tried before Mr. Justice Bradbury of Westminster, who kept the country store of that town. The defendants were two or three boys belonging to respectable families in Westminster who, from mere wanton mischief, had taken a wooden pump out of a well. They did not carry it off, but left it on the premises; their only design being to annoy the owner. He entered a complaint before Mr. Bradbury and the boys were arrested for malicious injury to real estate. Their parents retained our firm to defend them. I told them that I thought there was no defence to the action, but we would see what could be done. Accordingly I ap-

peared before the Justice and the evidence was conclusive that the boys had drawn the pump out of the well and left it lying on the ground near by. I took the point before the Justice that this was not malicious injury to real estate, inasmuch as the land was not injured or affected in any way, that the pump itself was personal property and therefore that the complaint should have been for malicious injury to personal property.

The trial was held, as was usual, in Mr. Bradbury's store, a table being set between the counters, and the Justice frequently being interrupted for the purpose of weighing out tea and sugar during the trial. Lying on the floor of the shop were two or three cucumber wood pumps exactly like the one the boys had taken out of the well. In order to convince the Magistrate that these pumps were personal property, I asked him if it was necessary, when he sold one of these

wooden pumps to a customer, to convey it by a deed of sale. If it was not necessary to so convey this property, it could not be real estate. If, on the other hand, these pumps were real estate, all of the sales which he had made were void and the dealers could return the articles on the ground that there had been no legal conveyance of the same. This argument struck the Justice with great force, and he decided that the boys should be discharged on account of the defect in the form of the complaint as it should have been for malicious injury to personal property. But the astute Justice did not propose to allow these criminals to escape on technicalities. As soon as he rendered his decision, he immediately drew another complaint against the boys for malicious injury to personal property and they were rearrested upon the spot and we proceeded at once to trial. Upon this trial I cited authorities, which were of course numer-

ous and uniform, to the effect that a pump in a well which was in use was a part of the real estate and was not personal property. The Justice could not deny the validity of these decisions and consequently was obliged to discharge the boys upon this complaint also, and the young culprits escaped punishment. The Magistrate enjoyed the joke upon himself as much as the rest of us. In fact many of these legal trials at the time were looked upon as huge jokes and the loser was usually good natured.

Another case which I recall in my earliest experience was a retainer by a client against whom an action had been brought for five dollars, the price of certain nursery stock which he had purchased of a travelling salesman. It turned out to be poor stuff and he did not propose to pay for it unless he was obliged to. He gave me the facts of the case and I told him he had no defence whatever to the suit and

he had better settle it. He insisted, however, upon a trial and said that something might turn up in the course of the proceedings by which he could get clear. I told him I should charge him twenty-five dollars for trying this case in Gardner, which was twelve miles from my office in Fitchburg. He paid the money on the spot without any hesitation whatever and, at the appointed time, we attended the trial.

The plaintiff introduced a written contract for the articles in question. At that time there was a United States stamp tax which required all contracts to have an adhesive stamp, and there was a further provision that no contract should be introduced to the Court as evidence without such stamp. I was well aware that this provision applied only to United States courts and not to courts in the Commonwealth of Massachusetts. Fortunately, however, for my client, the Magistrate,

who was not a lawyer, was not aware that the provision was thus restricted in its application. Consequently when I referred him to the law of the United States in regard to these stamps, which provided that no unstamped instrument should be received as evidence in a suit at law, he seemed to think that was sufficient to exclude the written contract and it was consequently excluded, therefore the defendant prevailed.

These proceedings would be called rather sharp practice in these days, but they were very common at that time and, as I have already said, the whole contest was looked upon as a contest of wits, and if a person prevailed on account of knowing more than the other party, it was not considered at all derogatory to his character that he should use that knowledge in any way that was best suited to the interest of his client.

Cases were frequent relating to the sale

of horses and cattle where the defence was a breach of warranty, and it was as necessary in those days for a country lawyer, in order to be a successful practitioner, to be familiar with horse lore as with Blackstone's Commentaries.

During my boyhood, all jury cases in Worcester County were tried in the City of Worcester. As there were then no railroads connecting the various towns with that city and no telegraphs, it was necessary for the country lawyers having extensive practice to spend most of the long winter term at the Shire Town, consequently there was much more good fellowship and fun among the members of the bar than at present. My partner, Mr. Wood, told me several good stories which were related around the fire at the old Wait Tavern, opposite the Court House in Worcester, as the lawyers were smoking their cigars in the evening. The deputy sheriffs, also, who were attending Court

stopped at this Tavern, and there were frequent contests of wit between the lawyers and the sheriffs.

On one occasion, there having been quite a contest between them, one of the sheriffs remarked that it was a consolation to think that there would be no lawyers in heaven to disturb the peace of the community. In reply to this one of the attorneys remarked that it was evident that there was at least one lawyer in heaven. He referred to Mr. Burnside, a prominent lawyer in Worcester but recently deceased. He was an able man and quite shrewd in trial of causes, being sure to take every point that could possibly be taken in behalf of his client. The attorney said that it was well known that at the death of Mr. Burnside his spirit appeared in heaven and knocked at the gate for admittance. Saint Peter approached the portal, partly opened the great gates, and asked him who he was and what he wanted.

Burnside replied that he was lawyer Burnside of Worcester and desired admittance to the heavenly precincts. Saint Peter told him that no lawyers were admitted as their conduct on earth had not been sufficiently peaceful and righteous to entitle them to immediate admission to the heavenly realms. Mr. Burnside told Saint Peter that he would like to argue that point with him, and immediately began to produce some reasons why he thought he ought to be admitted. The discussion became quite warm between Saint Peter and Mr. Burnside and, during the talk, Burnside slipped by Saint Peter and got inside. Saint Peter ordered him out and Burnside said he had no right to remove him except by writ of ejectment. Saint Peter at once sued out a writ and heaven was searched high and dry to find a deputy sheriff for the purpose of serving it, but as none could be found lawyer Burnside remained within the heavenly portals.

Judge Emory Washburn, afterwards Governor of the Commonwealth, at one time tried more cases than any other lawyer in the county, and his name appeared more frequently in the Supreme Court Reports than that of any other counsel. For instance, at the session of the Supreme Judicial Court for the County of Worcester in 1843, the year before he was appointed one of the Justices of the Common Pleas Court, he argued sixteen cases out of eighteen which were argued at that term. He was an excellent lawyer, an exceedingly fair minded and courteous man, and a great favorite among the members of the bar and the general public. He was at one time trying a jury case against a prominent lawyer of Worcester who was a man of great personal magnetism, and with a high opinion of his own learning, which opinion was confined entirely to himself. During his closing argument to the jury he enunciated some most

astonishing propositions of law, many of which had never been heard of until they were pronounced by him on this occasion. Mr. Washburn said to him, — "Brother ——, where do you find authority for these propositions?" Mr. —— turned upon him with a most withering look and shouted so that he could be heard all over the court room, — "In Blackstone's Commentaries and forty other books." This appeared to be very effectual to the jury, who undoubtedly thought that the learning of his opponent had greatly overshadowed the attainments of the modest appearing Washburn.

One of the most important cases that I ever tried was the case of *Ford* v. *Fitchburg Railroad Company*, 110 Mass. 240. This is one of the leading accident cases in Massachusetts. I appeared for the plaintiff. He was a locomotive engineer, and the action was brought to recover damages on account of injuries received

from a defective locomotive by an explosion of the boiler. The plaintiff was thrown a long distance and received serious injuries from which he eventually entirely recovered. As he was lying on the ground, unconscious, the conductor of the train procured a mattress from a manufacturing establishment near the place of the accident, upon which my client was carried to his home. After the suit was brought, the Superintendent of the Fitchburg Railroad Company sent a bill to my client for ten dollars for this mattress. My client was indignant at this proceeding, but I advised him to pay the bill at once and told him that it was undoubtedly the best investment that he had ever made or ever would make in his life. It goes without saying that this transaction was ventilated in the presence of the jury, and that the plaintiff's counsel took special pains that at no time during their deliberations should the jury forget this episode.

The case was tried three times in the Superior Court, each trial lasting about a week and resulting in verdicts for the plaintiff. The first two verdicts were set aside by the presiding judge. I never knew whether they were set aside on the ground that they were against the evidence or on the ground of excessive damages. The third verdict was for the sum of eighty-five hundred dollars which, at that time, was considered to be a large verdict. The presiding judge refused to set the verdict aside, and the Supreme Court sustained his decision.

At the third trial my brother-in-law and the brother of the General Superintendent of the Fitchburg Railroad Company were both drawn upon the jury. This was not known to the counsel on the other side. Of course I did not propose to try a case before my brother-in-law without the knowledge of the other party. I therefore stated to the defendant's counsel the

fact that my brother-in-law and the brother of the defendant's Superintendent were both on the jury and that I would give them the choice to try the case before both of them, or if they challenged my brother-in-law I would challenge the brother of the Superintendent. After consulting with their clients they decided to allow both of these jurors to remain on the panel.

I ascertained, after the trial was over, that the amount of the verdict was determined by adding together the figures of each juror and dividing the gross sum by twelve. I further ascertained that the Superintendent's brother figured higher than any man on the panel on the question of damages and that my brother-in-law was among the lowest. It turned out, therefore, that my agreement with the other side was quite advantageous.

At the trial the defendant called as witnesses the entire Board of Directors of

the Fitchburg Railroad Company. They testified that they intended to purchase good locomotives and to keep them in proper repair and that, so far as they were aware, their efforts were successful, and that they had no knowledge or suspicion that the locomotive in which the boiler exploded was out of repair or dangerous at the time of the accident.

One of these Directors was a wealthy man who had made the beginning of his fortune by keeping a saloon. He had long since retired from business, and was an exceedingly respectable and courteous gentleman. In my cross-examination I commenced by asking him what his occupation was. With the most extreme courtesy, and with a smile that covered his whole face, he said he was a gentleman.

Lest this answer may seem somewhat surprising, I will state that it was the custom, when I went into practice, in drawing deeds or making writs to designate

the parties by a title that represented their occupation. A farmer was "a yeoman." A justice of the peace was designated as "an esquire." A person who had retired from business and had no occupation, who was not a justice of the peace or a professional man, was then designated in these legal documents as "gentleman." This was undoubtedly the idea that this witness had when he answered the question in that way.

I immediately saw that the Lord had delivered him into my hands by this answer. My next question was, — "How long have you been a gentleman?" He answered, — "About twenty years." "What were you before you became a gentleman?" He said that he kept a saloon in Boston. I asked him if he sold intoxicating liquor to be drank on the premises while conducting his saloon and he replied that he did. It will be remembered that he had testified with the other

Directors that, so far as he was aware, this locomotive was in perfect condition. I then asked him if, during his business career, he had had any experience in mechanics except in the manufacture of mixed drinks? This question he answered in the negative.

Notwithstanding this passage at arms, we became very good friends after that and remained so during his life.

When this case was finally decided in 1873, one of the Directors of the Fitchburg Railroad Company who resided in Fitchburg stated that the Company desired to make some arrangement with me so that I should not be engaged in any further litigation against the Company. I told him that nothing was easier, and from that time I was retained by the Fitchburg Railroad Company and, of course, never tried another case against it.

Among my early cases was that of one *Manley* v. *Town of Ashby* to recover

damages for injuries received while driving on the highway. Ashby is a small town adjoining Fitchburg. The defence of the case was very vigorously conducted, the town summoning thirty or forty witnesses. Among other defences it was claimed that the plaintiff's horse was unsafe. I had frequently seen the animal and was confident that, whatever other faults he might have had, he was not at all dangerous. He was very aged and in contour and general appearance resembled Don Quixote's Rozinante, as depicted by Doré. I was quite anxious that the jury should see him but I knew that the Judge would not allow a view taken of the horse. The trial lasted several days. One day during the trial, on returning after lunch, to my delight I found that my client's horse was tied to a post in front of the Court House, the plaintiff standing by him. Whether I suggested this arrangement or not I do not remember so I can neither admit nor

deny it, but I was delighted to find him there and stopped and talked with my client near the team. The jury were returning from lunch and passed us. I observed they paid considerable attention to the animal and looked him over with some curiosity and their faces were wreathed in smiles. They had heard during the forenoon something of the dangerous qualities of this animal and were evidently surprised when they saw him. One of them asked me whether that was the horse referred to, to which I gave the only reply possible under the circumstances that I was not allowed to answer any questions of that character. The jury drew their own inferences and had no difficulty in finding for the plaintiff.

The earliest criminal case that I recollect was the defence of a very respectable looking young man who was arrested for stealing a gun and buffalo robe. As the evidence was insufficient to hold him, he

was discharged. I defended him with all the vigor I possessed, and had implicit confidence in his statement that he was innocent. After the trial he said he was very sorry that he had no money to pay me for my services, but was willing to give me the robe and gun if I would take them for my fee. As the title to this property was somewhat precarious, I was obliged to refuse, and my account still stands against him for my services on that occasion.

Our firm was retained as town counsel for the town of Fitchburg for many years. As such counsel it was my duty to prosecute complaints for illegal sales under the liquor law. The proprietor of the Fitchburg Hotel was at one time complained of and arrested for illegal sales of liquor. These sales took place in a room on the first floor of the hotel, numbered fourteen. Sales were made there constantly, and it was well known to everybody who fre-

quented the house that such was the case. The town each year chose an agent to prosecute liquor cases. He instituted a complaint against the proprietor of the Fitchburg Hotel and summoned a large number of witnesses who were in the habit of frequenting this room and purchasing liquor therein. Some of these witnesses were the principal retail merchants of the town, men of good standing and entire respectability. As attorney for the Commonwealth, it was my duty to examine them as witnesses before the presiding magistrate. Without exception, each one of these witnesses denied ever having purchased liquor in the Fitchburg Hotel. They denied that they knew anything about room number fourteen or was ever in it. I do not remember exactly how many witnesses testified, but there was certainly over a dozen and each one denied all knowledge of or participation in the violation of the liquor law. Some of these

gentlemen I had myself seen in that room more than once while liquor was being sold. There being no evidence against the defendant, he was discharged. During the trial I was reminded of the assertion of Uncle Toby, — "Our armies swore terribly in Flanders, but nothing to this."

An amusing occurrence has recently been called to my attention. Several years ago I was defending an action brought to recover damages for personal injuries. The plaintiff claimed that on account of an injury to his shoulder he was unable to raise his arm and hand above his waist. He illustrated to the jury how high he was able to raise them. On cross-examination I of course made no imputation that he was not telling the strict truth, but I asked him if he was sure that his present infirmity resulted from the injury received on the railroad. He said that he was. I then asked him if it was not a fact that before the railroad

accident he had this same inability to raise his hand and arm. He repudiated this supposition with great vigor. I said to him, — "Up to the time of this injury, could you raise your hand and arm as well as you ever could?" He said that he could. I said, — "Won't you please illustrate to the jury how high you could raise this arm before the injury." He put it up at once in a perpendicular attitude like the Statue of Liberty enlightening the world. It is hardly necessary to state that he failed to recover damages for that injury.

While I resided in Fitchburg I served for two years on the School Committee. It was, at that time, composed of five persons, all professional men, — one clergyman, two doctors, and two lawyers. The clergyman was the Rev. Mr. Jones of the Episcopal church, a most charming gentleman, highly cultivated and exceedingly popular. I remember on one occasion the

subject of discussion was the question of raising the salary of certain female teachers. Some of us were in favor of raising the salary of all the teachers and others of raising the salary of those only who had been long in the service. The members of the Committee expressed their opinions *seriatim*, Mr. Jones, being the youngest member, closing the discussion. He began in this way, — "As for me, I should like to embrace all the female teachers." The reverend gentleman was somewhat surprised at the exhibition of horror expressed at such an improper and unclerical remark.

Mr. Jones and I were attending the closing exercises of one of the primary schools. It was the custom for each member of the Committee to deliver an address to the scholars at the close of the examination. On the way to the school, I stated to Mr. Jones that I was always embarrassed in talking to very young children as, having no children of my own, I had no

experience in interesting them by my remarks. He said he labored under the same difficulty, but his great resource was to relate to them the story of "Bruce and the Spider." Being the senior member of the Committee I preceded Mr. Jones in the closing exercises and, to his disgust, I related to them the story of "Bruce and the Spider," leaving him without any ammunition when he came upon the firing line.

CHAPTER IV

THE SUPERIOR COURT

In 1873 I removed to Boston and in 1887 was chosen General Counsel of the Fitchburg Railroad Company and thereafter, until the road was leased to the Boston and Maine in 1900, I had entire charge of the legal business of the corporation, trying nearly all of the cases in person. This called me into every county in the Commonwealth, and I have tried cases in all the counties excepting Barnstable, Nantucket and Plymouth. I thus became acquainted with the leading lawyers in Massachusetts, and with all of them I have had very pleasant relations. For several years, I had occasion to hear arguments by nearly all the most distinguished lawyers in the Commonwealth. There

were three members of the bar who, in my judgment, used the most correct language in addressing the court of any members of the legal profession. They were Richard Olney, T. M. Stetson of New Bedford and Daniel S. Richardson of Lowell. The oral arguments of these three gentlemen, if committed to writing, I think would have been nearly perfect in point of rhetoric. Neither of them were flowery in their eloquence, but their command of language was remarkable, and it was delightful to listen to them.

In 1859 the present Superior Court was established, succeeding practically to the business and jurisdiction of the Court of Common Pleas and of the Superior Court for Suffolk County which were then abolished. The real object of the passage of the Statute was to get rid of several judges on the Common Pleas bench who had apparently outlived their usefulness.

To a lawyer who had no experience in

trying cases before the year 1859, the proceedings of the old Common Pleas Court would appear peculiar. At that time lawyers were not obliged to stand while examining witnesses. On the contrary, during the whole trial lawyers would sit at the table and, there being no stenographer in those days, would deliberately ask questions, writing the questions on their minutes, and, when the witness answered, writing the answer. In this way, trials were long and tedious, although the bar took them much more leisurely and with less fatigue than at present. Generally the proceedings in that court were exceedingly dignified and slow. It was not unusual for a judge to charge a jury for two or three hours on a case of no special importance.

There was much indignation among the bar when the judges of the Superior Court promulgated the rule that lawyers must stand during the examination of witnesses.

This rule made it necessary, in all cases of importance, that two counsels should be employed, one to examine the witness and the other to take minutes of the testimony. There was some talk of a formal protest by the members of the bar, but I am not aware that it was made.

One of the judges of the Court of Common Pleas was a great lover of horses. He always kept a fast horse and was accustomed to test his speed in friendly contests with his neighbors. While he was holding court at Fitchburg, there was a horse race at the fair grounds. At the noon intermission he remarked to one of the counsel that he would like very much to attend that horse race and was sorry that his duties would not permit him to do so. The word was passed around among members of the bar that the Judge would like an excuse to attend the race. Upon coming into court after dinner, the plaintiff's counsel arose and stated to the

court that his principal witness had not appeared and that he did not see how he could go on without him. He regretted exceedingly to ask the court for delay, but it was utterly impossible to proceed without the presence of this witness. (He did not state to the court that the witness was absent on account of a suggestion made by the counsel.) His Honor said that it was a great misfortune to waste a half day at the expense of the county, but under the circumstances he was compelled to adjourn until the next morning as no other case was ready. Some of the lawyers thereupon invited his Honor to attend the horse race and the invitation was accepted and he enjoyed the afternoon amazingly.

None of the Common Pleas judges were appointed upon the Superior Court. Charles Allen and Marcus Morton, who were judges of the Superior Court for the County of Suffolk, were appointed. The

other appointments were made from the bar.

One of the Superior Court judges was Ezra Wilkinson of Dedham who for a long time had been District Attorney of Norfolk County. He was an exceedingly able lawyer, a bachelor of grave and stern demeanor and of great dignity. He had a way, when he was at all embarrassed by making a mistake or being guilty of any slight solecism, of clearing his throat in a most audible and terrific manner.

I remember when he was holding court at Fitchburg, as usual a clergyman was called to make the opening prayer. The prayer was very long, and near the close, when the Judge and bar were rather tired of standing for such a length of time, the clergyman prayed that the presiding justice might perform his duties successfully during the term, that he might dispense justice tempered with mercy, that the criminals who should be brought before

the court (by the way, this was a civil term), might meet with their just deserts, and that finally, at the close of his arduous labors, the presiding judge might be restored to the bosom of his wife and family in good health and with the satisfaction of duty well performed. Judge Wilkinson cleared his throat so that it might have been heard throughout the county, and the members of the bar with difficulty retained a devout demeanor.

I remember another occasion when a case involving a sale of friction matches was tried before Judge Wilkinson without a jury. At the close of the case the Judge commenced to deliver his opinion. With his usual dignity and slow and distinct utterance, he began in this way: — "This action is brought to recover the contract price of a large amount of 'maction fritches.'" Then came an immense clearing of the throat but, without a smile on

his face, he added, — "I would say, friction matches."

As I have already stated, Judge Wilkinson was a man of great dignity. He was not only anxious to perform his own duties, but insisted that others should perform theirs. At that time the Clerk of the Superior Court of Worcester County was in the habit of absenting himself for an hour or so when he thought there would be no special necessity for his remaining in court. Upon one occasion when a case was on trial at Fitchburg which appeared to be sure to last the whole day, the Clerk went out in the afternoon to make a call. The case on trial suddenly broke down and a new case was called. There were some fifteen or twenty witnesses for the plaintiff who were called to be sworn. Judge Wilkinson looked down at the Clerk's desk and perceived that the Clerk was absent. Instead of administering the oath himself as judges usually did under these circum-

stances, he asked the Sheriff what had become of the Clerk. The Sheriff professed ignorance. Judge Wilkinson told the Sheriff to go and find him. The Sheriff departed, and the entire business of the court ceased during his absence. After an interval of several minutes he returned and said he could find no trace of him. I was sitting at the bar at the time, and Judge Wilkinson said to me, — "Mr. Torrey, I appoint you Clerk *pro tem* of this court." I therefore assumed the seat of the Clerk, and the oath of office was administered to me by Judge Wilkinson, who then directed me to administer the oath to the witnesses. Senator Hoar, who was one of the counsel in the case called for trial, for the purpose of a little innocent mischief, objected to my administering the oath, inasmuch as I had not given bonds as the law required for discharging the duties of the clerkship. Judge Wilkinson, having cleared his throat in the

usual manner, called for the Statutes. He examined them with due care and ruled that it was not necessary for me to give a bond before administering the oath. I consequently administered the oath to the witnesses and the case proceeded. In the course of an hour the Clerk returned. I was sitting in his seat at his desk. He came up to the desk but I appeared not to notice him and, to his surprise, did not surrender the seat. He finally attracted my attention and said, — "I would like to resume my seat." I said to him, — "I do not know you. I am Clerk of this Court at present. If you have any authority to take my seat, you must produce it." I then explained to him how I came to be there, and his indignation exceeded all bounds. I surrendered my seat, and he asked me what I had done during my time of holding office. I told him that I had administered the oath to about twenty witnesses and receipted the

Clerk's bill of the firm of Wood and Torrey.

Another judge who was appointed on this bench was Judge Otis P. Lord of Salem, a most excellent lawyer, quite decided in his manner of utterance and with a strong will of his own. I have sometimes seen him almost annihilate an attorney who had improperly brought an action or was guilty of misconduct in the course of his practice.

I remember one occasion at Worcester when an attorney, whose name I will not give, opened his case to the jury. This attorney was an excellent gentleman but among his acquaintances the common and statute law were not included. He made a long opening. When he had finished, Judge Lord looked at him and said, — "Mr. ——, I suppose you think you have a case, don't you?" "Yes, your Honor," was the reply, "I think so." "Well," said the Judge, "I don't, and I shall take

this case from the jury on your opening, if this is the only evidence you have." The poor attorney had no more idea wherein his case was lacking than a child unborn.

I was trying a case before Judge Lord, in which I appeared for the plaintiff, to recover damages against the Boston and Lowell Railroad for injuries received by a brakeman in the course of his employment. The injuries were quite serious and the question of law was somewhat difficult. Col. John H. George, attorney for that Company, appeared for the defendant. The case had proceeded nearly all day when, during the examination of a witness, Judge Lord beckoned to Colonel George and myself. We stepped up to the desk and he said, — "Why don't you settle this case? This poor fellow here is seriously injured. There is considerable doubt whether the road is liable; the proceedings will be costly to both sides; I

think you had better settle it." Colonel George: — "What do you think we had better do, Judge?" Judge Lord said, — "I think you ought to give him a thousand dollars." Colonel George said he would do it and then turned to me and said, — "Will you take it?" I said "Yes." Judgment was entered for that amount and the case was disposed of.

An amusing story is told of one of the judges who was appointed on the Superior bench some years after it was established. He was an excellent man, popular in his county, but, unfortunately, was not very well grounded in law. There being a vacancy on the bench, a numerously signed petition was presented for his appointment. The Governor expressed a doubt whether the candidate was sufficiently well grounded in law to properly discharge the duties of the office. The petitioners thought he was, and after considerable talk the Governor said: "I will tell you,

gentlemen, what I will do. I will consult Judge Bigelow, formerly Chief Justice of the Supreme Court, and if Judge Bigelow does not say that your candidate is totally unfit for the position, I promise to appoint him." Judge Bigelow was interviewed and the Governor asked him whether he did not consider that the applicant was totally unfit for the position of Judge of the Superior Court. Judge Bigelow replied that he could not say that he was *totally* unfit for the position, inasmuch as one of the requisites was strict honesty and integrity, and he thought the applicant fulfilled these requirements. The Governor, therefore, to keep his word, was obliged to appoint him.

At one term of the Superior Court I obtained three verdicts in cases tried before this judge, in each one of which exceptions were taken and allowed. When these three cases came up to be heard before the full bench of the Supreme Court,

as the other side was the excepting party, it was for my opponents to open and close, but in each case the court called upon me to go ahead and, after I had finished, declined to hear the other side. Upon the third call I stated to the court that I certainly thought that the ruling of a judge of the Superior Court ought to be understood as presenting a *prima facie* case so that the excepting party should be called upon to sustain his position. In each of these cases the exceptions were sustained and the verdicts set aside.

Among the judges of the Superior Court was P. Emory Aldrich. He was an able man, an excellent judge, conscientious, very kind hearted, just and impartial in his rulings, and honored and respected by all who thoroughly knew him. His health was far from perfect, and he was at times somewhat irritable and would occasionally be rather severe when upon the bench. To those of us who knew him and had

practised with and against him at the bar, these peculiarities caused no terror because we knew they were induced by a mere momentary impatience.

Before he was appointed to the bench, he had been for many years District Attorney, and was one of the ablest District Attorneys that ever held that office in the Commonwealth. Verdicts for the defendant or disagreements were exceedingly rare during his administration. He thoroughly examined the evidence, and if he had grave doubts of the guilt of the defendant he would not prosecute him; but when he thought a defendant was guilty, he would pursue him with a persistency, skill and acuteness that rarely failed of success.

At that time I was quite young at the bar, and as our firm always had a number of criminal cases it was my custom at the beginning of the term to go to Worcester and arrange for the trial of the cases in

which we had been retained. The proceedings on these occasions were always identical. When our morning train arrived at Worcester the court was opening for the day. Mr. Aldrich would be at his desk engaged in the prosecution of some criminal case. I sat down quietly beside him, and when there was a lull in the proceedings so that it would be proper to distract his attention, I would hand him a list of my cases and ask him if he could not arrange so that these cases might be tried consecutively to save me the necessity of spending the term in Worcester waiting for the cases to be called. Most of the cases were trivial ones of assault and battery or violation of the liquor law. Invariably, when I laid the list before him and made this request, he would turn upon me, with the most savage expression, and say, — "We cannot disarrange the whole order of proceedings before this court for the purpose of accommodating counsel.

I can make no arrangement in regard to these cases. Whenever they are called you must be here to attend to them or they will go by default." If I had not known him thoroughly, I should have considered this decision as final. But I knew this was nothing but the shower which indicated the near approach of fair weather, consequently I would remain seated near him making no reply to this observation. Sometimes, if he were feeling particularly well, he would turn to me within a few minutes and say, — "Be over here on such a day and I will take up your cases." If, on the other hand, he was unusually depressed, weary or unwell, it might be an hour or two before he would make this observation. But it always came, and I felt as certain when I handed him the list that he would comply with my request as if I had had his previous assurance.

Out of court he was always genial and

courteous, and I think nobody regretted more than he did when he was apparently discourteous or harsh in his rulings or conversation.

After he was appointed to the bench of the Superior Court, I was retained as senior counsel in a case of malpractice in Suffolk County brought against one of the leading physicians of the city. Our client was a young woman of prepossessing appearance and, if her statement on the witness stand was true, it was a gross case of malpractice. She was contradicted by several nurses and doctors. The case lasted nearly a week. In the early part of the proceedings, it was very evident that the presiding judge thought there was no merit in the plaintiff's case and disbelieved her testimony. He was very severe upon the plaintiff's counsel, and although he made no rulings to which exceptions could be taken, he showed that he had a strong prejudice against the

justice of the plaintiff's case. While the defendant was putting in his case, I objected to certain testimony. Judge Aldrich, with a look which used to frighten young attorneys nearly to death said, — "What is your objection?" I began very quietly by saying that I did not think the testimony was competent. The Judge replied, — "It makes no difference what you think; the testimony is competent and I shall admit it." The jury smiled as they always do when an attorney is snubbed by the court.

I had no ill feelings on account of this incident as Judge Aldrich and I were always great friends, but during the trial I spent considerable thought on how to get even with the Judge for this remark which I thought tended to prejudice our case. During the closing argument, therefore, I treated the matter in this way. I said to the jury, — "A certain incident occurred during this trial which perhaps

you consider to be a reflection by his Honor, the presiding judge, upon the senior counsel for the plaintiff. If so, you are entirely mistaken in your view of the transaction. His Honor stated that it made no difference what I thought in regard to the admissibility of certain testimony. That statement was literally and entirely true. The opinion of counsel in regard to the admission of testimony is to have no weight whatever with the jury. It makes no difference what counsel think in regard to it. You are to be governed entirely as to the law by the rulings of the Judge, and the opinion of the attorneys connected with the case are not to have the slightest bearing or effect whatever. That is what his Honor meant when he stated that it made no difference what I thought in regard to the admissibility of certain testimony. But, gentlemen, when you come to consider the facts of this case, when you come to consider the question of

veracity between my client and the eminent physician who figures as the defendant, there is another proposition of law which is equally true, and that is that, so far as the facts are concerned, it makes no earthly difference what either the counsel or his Honor, the eminent Judge who presides at this trial, thinks in regard to them. On a question of fact, the jury is supreme; you are the only judges of such questions, and if you should imagine for a moment, from the charge of the presiding judge, that he had any opinion in regard to the facts of this case you will undoubtedly be in error as his Honor is not allowed to state to the jury his opinion of the facts, and even if you are not in error and his Honor has certain opinions in regard to the facts of this case, I say with all respect, and his Honor will confirm me in the statement, that it makes no difference what he thinks in regard to the facts. The question is entirely for your consideration,

unaffected by the opinion of any one else."

Judge Aldrich, so far from being offended at my treatment of his remarks, was apparently much tickled by it, and told me at the close of my argument that he thought I got back at him pretty well for his hasty remark to me during the trial.

I had another amusing experience with Judge Aldrich where the laugh was upon me. While my family were away for the summer, my house in Boston was broken into and robbed of various articles of apparel. The thief was discovered and tried for the offence. I was a witness for the purpose of identifying the stolen articles. I flattered myself that I made a pretty good witness. At all events, I was not a bashful or reluctant witness as the District Attorney afterwards told me that I identified, without the slightest hesitation as the property of my wife, a cheap imitation astrakhan jacket, which was

shown to me by mistake for the one that was stolen, a garment worth eight or ten times the amount of the one shown me.

The culprit was defended by a young colored lawyer who did not know me and was not aware that I was a member of the bar. In commenting upon my testimony he was good enough to say that he presumed I was a respectable man; at all events, I appeared to be so on the stand. He said, — "Gentlemen of the jury, when a man who knows nothing about the law, and has had no experience in legal matters takes the stand in court he is apt to be embarrassed and will inadvertently testify to things which are not true, and I consequently ask you, when you comment upon the evidence, to remember that he is entirely unfamiliar with legal proceedings and very likely he might have said things which are not entirely correct." I was sitting at the bar at the

time and during these comments Judge Aldrich gave me a most portentous wink.

The jury found the defendant guilty. As I was leaving the court room, the Sheriff told me that the defendant wished to see me. I went to the dock and, with a merry twinkle in his eye, the defendant said, — "Were you aware when you visited me in the cell at the station house that I had on one of your vests stolen from your house?" I told him that I did not notice it. He said, — "All the time you were talking to me I had on one of your vests and my coat was unbuttoned so that it was in plain sight and I expected every moment you would recognize it." I made up my mind that my forte was not the detective service.

Another prominent judge of the Superior Court was Judge Robert C. Pitman. He was also a good judge, and I think one of the most conscientious men that I ever met in public life. I was defending the Fitchburg Railroad Company in the case

of *Murray* v. *Fitchburg Railroad Company*, 130 Mass. 99, and the second trial was held before Judge Pitman. This was an action of trespass which involved the title to land which we claimed was covered by our location. Evidence of possession of part of the land covered by our location was offered by the plaintiff. I objected to this evidence on the ground that no length of possession of land covered by our location could avail the plaintiff. This was by force of a Statute of Massachusetts. It seemed that the attention of Judge Pitman had not been called to this Statute or that he had forgotten its existence. He said to me, therefore, with a smile, — "Mr. Torrey, you seem to think that there is something sacred about the rights of a railroad company," and, with the smile still on his face, looked toward the jury. They were immensely tickled with this remark. The case resulted in a verdict for the plaintiff. I made a motion for a new

trial solely on the ground that this remark of the Judge prejudiced the jury, and that it implied that there was no merit in our defence. The Judge took time to consider, and granted a new trial on that ground. He was frank enough to state that he thought the remark and manner of expressing it were improper and tended to influence the jury, and he therefore set aside the verdict. Very few judges would have been so free to admit that they had inadvertently prejudiced the case of one of the litigants.

Another well-known judge of the Superior Court was Charles P. Thompson of Gloucester. He was exceedingly witty and was very popular among the bar and the people of the Commonwealth, so much so that, although he was a Democrat, he was elected to Congress from a strong Republican district. He had an extensive practice before he was appointed to the bench. His voice was very loud and fre-

quently, when he became interested in his case, he would use unnecessary violence so that he could be heard not only throughout the whole court room but anywhere in the vicinity of the Court House. During one of his arguments the presiding judge interrupted him and asked him if he would be kind enough to speak lower as he was using much unnecessary force and vehemence. He complied and continued his argument in a much lower tone of voice. One of the jurors fell asleep during the argument. Brother Thompson turned to the Judge, in a very humble way, and said, — "Please, Your Honor, may I speak loud enough to wake up this juror?"

In private conversation Judge Thompson would frequently stutter to some extent. After he was appointed to the bench, while coming into Boston from Gloucester to attend court, a short time before arriving at the station he was introduced to a gentleman by a mutual friend. The gentle-

man sat in the seat with Judge Thompson and the Judge immediately began to tell him a story in which he stuttered considerably. Some months after, the same gentleman met Judge Thompson in the train and introduced him to a third party. After the introduction he asked Judge Thompson if he would not be kind enough to repeat to his friend that stuttering story that he told him on the trip to Boston some weeks previously. He thought the stuttering belonged to the story rather than to the narrator.

There was formerly in Bristol County an eccentric character who for many years had been crier of the court. He had a voice like a fog horn. When he called a litigant to come into court and prosecute or defend his suit or a default or nonsuit would be entered, he could have been heard all over Bristol County, and no inhabitant of the county, unless he were deaf, could have failed to have prosecuted

his action through inadvertence. While I was arguing a case before the full bench at Taunton, there came up a tremendous thunder shower. The crier was soundly sleeping at his desk. Suddenly there was a terrific peal of thunder, apparently immediately over the Court House. This awoke the crier. Hearing a loud noise, but not realizing the cause of the disturbance, he thought there was some confusion in the court room and brought his fist down on the desk shouting, in a stentorian tone, — "Silence in the Court!" Before resuming my argument, I stated to the court that, although I was well aware of the dignity of the Supreme Judicial Court of Massachusetts, it was a surprise to me that the Almighty was called to order for disturbing it.

I was at one time retained as senior counsel for the defence in a breach of promise suit. The letters of the defendant, which were relied upon as constituting

an agreement for marriage, were written upon telegraph and telephone blanks, I presume because the defendant was employed by the Company and used the blanks as a matter of convenience or economy. When the plaintiff's counsel introduced the letters he began to read the first one, commencing "My darling Laura." I objected on the ground that the whole of the document should be read. The court sustained the objection, and the plaintiff's counsel therefore began to read as follows:

"New England Telephone and Telegraph Company. Telephonic Message. The following message has been transmitted in whole or part by telephone, subject to conditions limiting the liabilities for errors, delays, and mistakes, which have been agreed to by the sender, and under which damages can in no case be recovered exceeding the tolls paid hereon, nor unless claimed in writing, within thirty days from sending the message."

"My darling Laura," etc.

Perhaps because the jury were under the impression that the above named agreement prevented the plaintiff from recovering damages except on the conditions referred to, the defendant obtained a verdict.

There was formerly an eminent member of the Suffolk bar who achieved great success as counsel for the plaintiff in accident cases. The verdicts which he recovered were very large for those days. He had the faculty of shedding tears whenever it was deemed expedient, and I have often seen him, in making the closing argument for a plaintiff, while commenting upon the injuries received by his client, crying as if his heart would break.

I was at one time defending the Fitchburg Railroad Company against an accident suit brought by him and wished to caution the jury against being affected by the manifestations of grief on the part of

the plaintiff's counsel. In closing my argument for the defendant I stated to the jury that it was the custom of the learned counsel for the plaintiff to be apparently overcome with grief in his closing argument, and to shed tears copiously when commenting upon the injuries which his client received. I suggested to the jury, however, that they should not be greatly influenced by this proceeding, inasmuch, as I had no doubt, that for every tear which coursed down the cheeks of the plaintiff's counsel his client was charged at least ten dollars. It is hardly necessary to state that in arguing that case no tears were shed.

Several years ago Dr. Henry G. Clark, a distinguished physician in Boston, was employed to a great extent as a medical expert in accident cases. In nearly every important case he appeared either for the plaintiff or defendant. He resided on Mt. Vernon Street and used to drive a white

horse which was very well known in Boston. This horse would stand in front of the old Court House in Court Square while the Doctor was testifying.

In an accident case in which I appeared for the plaintiff, Dr. Clark was our chief medical expert. The defendant's counsel showed in cross-examination of the Doctor that he appeared in a great many cases. In his closing argument he made considerable fun by stating that the Doctor's well-known white horse, if let loose at any time in the streets of Boston, would undoubtedly proceed to the Court House and stand in front of it, as he passed the most of his time in that locality. This sally of course pleased the jury, and I feared that it might lead to the belief that the Doctor was testifying rather stronger than was to be expected on the part of an honest expert. In closing for the plaintiff, I alluded to this remark of the defendant's counsel and said that I thought it was

undoubtedly true. It was a fact that Dr. Clark testified much more frequently than any other physician in Boston, and the reason was obvious. He stood at the head of the profession as a medical witness, and the first question that would occur to any counsel in an accident case was what was the opinion of Dr. Clark upon the extent of these injuries, as his opinion was of more value than that of any other physician in Boston. That was the reason why he appeared so much more frequently for the plaintiff than for the defendant, inasmuch as the plaintiff, before the suit was brought, consulted him and retained him as a medical expert. The jury seemed to take this view of the case, as large damages were awarded.

CHAPTER V

THE SUPREME JUDICIAL COURT

WHEN I was admitted to the bar, the Supreme Judicial Court consisted of six judges, — viz.: Chief Justice Bigelow and Justices Dewey, Metcalf, Merrick, Hoar and Chapman. This was a very able court. Judges Bigelow, Merrick and Hoar were graduates of Harvard College, and Justices Dewey, Metcalf and Chapman received the honorary degree of LL.D. from the same institution.

Chief Justice Shaw, after serving thirty-one years, resigned in 1861, the year of my admission to the bar. As is well known, he was one of the ablest lawyers in this country, and has a great reputation wherever the English common law is administered. He was certainly the wisest looking man when sitting on the bench that I ever

saw, and seemed to impress one as being omniscient. If he did not know everything, he never furnished any proof of such lack of knowledge.

Perhaps Judge Hoar had the keenest intellect of any member of the court at this time.

The quaintest character was Theron Metcalf, exceedingly proficient in the common law, but for some reason he had little or no acquaintance with the statute law of the Commonwealth. He seemed to feel that any alteration of the common law by the learned Solons at the State House amounted almost to sacrilege. I remember hearing Judge Metcalf charge the jury when he laid down the law of the case in favor of the plaintiff. At the close of the charge, the defendant's attorney stated to the court that the statute law of Massachusetts had changed the common law rule which had been given to the jury as the law governing the case. Judge Met-

calf said; "Where is this Statute?" The attorney answered: "It is contained in the General Statutes." "Very likely," said Judge Metcalf, "I never read them. Pass them up here, please." The attorney handed him the General Statutes, and he saw at once that he had laid down the law incorrectly, and in a supplementary charge told the jury that the Legislature of Massachusetts, in its wisdom, had seen fit to annul the beneficent provisions of the common law, and he was therefore constrained to change his instructions.

It is related of Judge Merrick that he was, at one time, holding a jury session of the court at Nantucket and, on coming out of the Court House with the Deputy Sheriff in attendance as usual, he slipped and fell. The Sheriff was greatly alarmed but, instead of offering any consolation or expressing any fears for his personal safety, he said, while assisting him to arise, — "Thank God that it was not the Chief

Justice." Although this anecdote shows the veneration in which Judge Shaw was held at the time, there may be some doubt if the remark was particularly consoling to his unfortunate associate.

I argued my first case before the full bench of the Supreme Court in 1862 and my last one in 1901. During this period I appeared in about one hundred and thirty cases before the full court before thirty-one judges. There was nothing in my experience before the court worthy of particular attention unless it may be entertaining to consider two or three cases which furnished some amusement to the court and bar.

The first case that I argued before the full bench of the Supreme Court was *Bruce* v. *Priest*, 5 Allen 100. This was an action for assault and battery brought by a famous old litigant named Joel Bruce, about seventy-five years of age, a notoriously bad character and one who indulged in law suits as a drunkard indulges in in-

toxicating liquor. At the time the assault was committed the plaintiff, with a woman who lived with him as his wife but to whom he was not married, entered the house of the defendant's father. After some unfriendly conversation, the defendant ordered the plaintiff and the woman to leave. This order not being immediately complied with, the defendant procured a horse whip and struck the plaintiff several blows while he was leaving the premises. The defendant, in mitigation of damages, was allowed to introduce evidence that the general reputation of the plaintiff, and of the woman by whom he was accompanied, for moral worth and integrity was bad. The jury returned a verdict for the plaintiff with seventy-three dollars' damages, and he alleged exceptions on account of the admission of the evidence above referred to. The exceptions were sustained, and I was successful in establishing the principle that if

a man, accompanied by his paramour, intrudes himself into the house of another, he still has the right to be protected from assault and battery.

I trust that no one who reads these pages will seek to avail himself of this provision of the law.

Since my admission to the bar, there has been a great change in the method of preparing and arguing cases before the full court. At that time the briefs never contained a statement of the case. A brief was seldom more than one page long, and included merely the points relied upon, and of the authorities in their support. This custom had its advantages and its disadvantages. The advantage of it, so far as the bar was concerned, was that it compelled the judges to pay attention to the oral arguments. The judges then could not, as they sometimes do now, spend the time in reading the long briefs of the parties, apparently giving no attention

whatever to the oral arguments addressed to them. At that time every judge listened with attention to the oral arguments of the parties, no matter how tedious or irrelevant they may have been. The change from this custom was quite gradual, — briefs began to grow longer and consequently oral arguments were not of so much importance.

As a matter of curiosity I transcribe the defendant's brief in *Dawson* v. *Wetherbee*, 2 Allen 461.

"Worcester ss. Supreme Judicial Court. Oct. Term, 1861.

Charles L. Dawson *v.* Marshall Wetherbee.

Defendant's Brief.

The evidence proposed by the plaintiff was rightly rejected by the Court.

Kimball v. *Thompson*, 4 Cush. 441.

There was no necessity for an avowry as the verdict found that the plaintiff had no property or interest in the horse.

Quincy v. *Hall*, 1 Pick. 357.

Fleet v. *Lockwood*, 17 Conn. 233."

This brief was unusually short, but, as I have already said, at the time of my admission to the bar many briefs did not exceed a single page, and it was unusual for them to exceed two pages in length.

I remember on one occasion when I was arguing a question which seemed to me of great importance, the attention of the whole court, with one exception, seemed to be diverted from listening to my argument. Some of the judges were reading the briefs, and the Chief Justice and one of his associates were engaged in conversation. I immediately stopped and resumed my seat. The sudden silence in the court room attracted the attention of the court. The Chief Justice asked me if I was through. I stated that I was not, but I thought the court was otherwise engaged and I had paused until they had finished the business in hand. I was not reproved for this statement; in fact I think that the judges felt, at the time, that they were not treat-

ing the bar with the courtesy usually extended to them.

There was much more litigation in those days in small cases than there is at present. Many people seemed to be natural litigants. They enjoyed legal controversies, and would spend money freely for the sake of indulging their whims and caprices.

The case of *Park* v. *Baker*, 7 Allen 78, was a case of this character. The only question involved in that case, which was tried before a justice of the peace and, on appeal, tried two or three times in the Superior Court and finally argued before the Supreme Court, was whether an ice chest, worth perhaps five dollars, was personal property or attached to the real estate as a fixture. Both parties were notorious litigants and had fought each other for years. Although this case was decided against me by the full bench, I eventually recovered a verdict of five dollars, which carried the costs of three

or four trials, but was received with as much delight by my client as if he had recovered a fortune.

It was formerly much easier than it now is to upset a verdict upon exceptions. In the case of *Fairbanks* v. *Fitchburg*, 110 Mass. 224, a verdict of the Sheriff's jury, before whom the trial lasted nearly a week, was set aside simply because the Sheriff allowed the following question to be put to the petitioner: — "What is the probable future use of your remaining land?" To which the petitioner answered, — "For manufacturing purposes." The court ruled that this question was not admissible and granted a new trial. I do not think a new trial would at present be granted under the same circumstances.

The case of *Hadley* v. *Heywood*, 121 Mass. 236, furnished considerable amusement for the court and counsel, although probably the parties did not share in the enjoyment. In this case I was employed

as senior counsel, and took no part in it until the case was ready for trial.

This was an action of tort in which the plaintiff declared in two counts, — in the first alleging that the defendant had debauched the plaintiff's wife and deprived him of her society, and, in the second count, that the defendant had alienated the affections of the plaintiff's wife and enticed her to desert the plaintiff.

Both the plaintiff and defendant were farmers in a country town in Worcester County. The plaintiff Hadley was considerably older than his wife. He testified that he lived happily with her for some years when he began to suspect her of infidelity with the defendant; that he had been much troubled, had remonstrated with the defendant, had objected to his visits, and that soon after his wife left him and went to her mother's house to live.

The evidence of adultery was not very

strong. We proved that the defendant frequently called at the plaintiff's house when he was absent, that the defendant took the plaintiff's wife to ride, and that the defendant's horse was seen hitched by the roadside, near the woods, the carriage being unoccupied, and that, shortly before and after, the defendant and Mrs. Hadley were seen in the carriage.

It was my duty to cross-examine the plaintiff's wife who testified for the defence. She was quite a bright woman, and made a very good witness. I was unable to elicit any testimony from her which tended to implicate her. She testified that there had been no improper relations between her and the defendant; that he was simply an ordinary acquaintance, never gave her any presents or showed any particular affection for her. After cross-examining her at considerable length I began to despair of obtaining any testimony from her favorable to our case.

As I was about to abandon the cross-examination, I noticed a gold ring upon her finger. I asked her where she got it, and she said she bought it some years before. The thought occurred to me that it was a gift from the lover, and that there might be an inscription inside the ring to that effect. I asked her if she would allow me to examine the ring and she indignantly declined. Upon appealing to the court, the Judge directed her to permit me to see it. With the aid of a magnifying glass, I was able to read an inscription engraved on the inside of the ring as follows: — "Ham to Lu." (The defendant's name was Hiram and that of the plaintiff's wife Lucia.) I think this ring was the turning point which enabled us to obtain a verdict from the jury.

The defendant introduced evidence that the plaintiff had always been morose, cross and profane; that he had, on various occasions, used violence to his wife by

striking her, etc., and that this treatment was both before and after the time when the plaintiff stated that his suspicions had been aroused.

The defendant asked the Judge to instruct the jury that, in order to find a verdict under the second count, the jury must be satisfied that the plaintiff's wife left him solely on account of the wrongful acts of the defendant, and that, if the cruelty of the plaintiff was one of the reasons that caused her to leave, the plaintiff could not recover.

It will be observed that if this instruction had been given, no husband who had treated his wife in an improper manner could recover damages for her seduction and the loss of her services and consortium, if one reason of her leaving his abode had been the abusive treatment which she received from him. In other words, if this instruction had been given, a husband who was cross and abusive could

have no remedy against any person who seduced his wife.

The presiding judge refused to give this instruction, and submitted the case to the jury. The jury, after a long deliberation, returned into court with a general verdict for the plaintiff, and damages assessed at $657.10. The Judge thereupon, at the suggestion of both counsel, asked the jury whether they found their verdict on both counts or on only one, to which they replied through their foreman, — "On the second count," that is, on the count for enticing the plaintiff's wife to leave her husband. Both counsel suggested the question, — "How did they find on the first count?" To this question the jury stated that they did not agree upon the first count. The clerk proposed to enter the verdict for the plaintiff, and to state on the docket that it was found on the second count. The defendant's counsel at once objected to the reception and

entry of the verdict in that form, and contended that the defendant was entitled to an agreement on that count, or to have the jury discharged as disagreed. After a colloquy between the counsel and the court, the plaintiff suggested that he would ask for leave to amend by striking out the first count. To this the defendant objected. The Judge therefore sent the jury out again and told them that it was their duty to agree upon both counts. The jury then retired. After further deliberation they returned into court bringing in the same written verdict as before, that is, a general verdict for the plaintiff for $657.10. The Judge asked if the jury had agreed on the first count. The foreman replied, — "We did not find for the plaintiff on the first count." The Judge asked if they agreed for the defendant on the first count, to which the foreman replied, — "We did not." A member of the jury interrupted and said, — "There is some

mistake; we did agree for the defendant on the first count." To this the foreman then assented, and the jury were then sent out with the papers to put their verdict in form. They finally returned with a verdict as follows: — "The jury find for the defendant on the first count, and for the plaintiff on the second count, and assess damages in the sum of $657.10." The verdict in this form was duly affirmed and recorded against the objections of the defendant.

The case was tried before Judge Rockwell, a most excellent gentleman, but not an exceedingly accurate lawyer. He was completely at a loss what to do, and before the jury was sent out the second time he tossed the verdict to me and said, "Take that verdict and put it in any form you please; do what you have a mind to with it and I will assent to it, and then the verdict can go up to the Supreme Court. I do not know what to do myself."

The exceptions argued before the Supreme Court were twofold. In the first place, whether it was a sufficient defence in an action for seduction that the plaintiff's wife left him on account of his cruel treatment, and secondly, whether the defendant was entitled to a new trial because the jury did not at first find a verdict for the defendant on the first count.

As in my judgment the position taken by the defendant was absurd, I attempted to make it as absurd as possible in the brief, and it may be amusing to quote some passages from it which, at the time of the argument before the Supreme Court, were rather entertaining to the court and bar.

"1. The defendant's prayer for instructions is in substance a request for a ruling that the wife of a morose and cruel man may be seduced or enticed with impunity. There was probably never a case of this

nature where the conduct of the husband did not have some effect upon the course of the wife in yielding to improper advances; but it is believed that this is the first attempt to extend the doctrine of contributory negligence as applied in the case of a traveller upon a highway to the more intricate paths of matrimonial life."

"The application of this doctrine is not unattended with difficulties. To what extent must the disagreeable habits of the husband extend? Were the marital rights of Dr. Johnson beyond the pale of law? Is it a rule of morals as well as of law? Was Socrates released from his marriage vows? That great moralist advanced no such doctrine, and sought no such harbor of refuge. . . .

"2. The proceedings in the presence of the jury were ludicrous but legal, and having properly served their purpose in enlivening the course of the trial should not

afford an opportunity to the defendant to escape the verdict.

"In the case at bar it is manifest that the jury intended to find that the defendant enticed the plaintiff's wife, but did not commit adultery, and the defendant now complains that he was not found guilty of the latter offence also. His remedy is in the criminal court."

Another case which may furnish some entertainment is *Wood* v. *Medfield*, 123 Mass. 545. The plaintiff was a school teacher in the town of Medfield and was employed by the school committee to teach the high school. The contract was contained in the following letter: —

"MEDFIELD, Aug. 17, 1873.

C. E. WOOD, Esq.:

My dear Sir, —

The School Committee have had under consideration your proposal.

It was voted by the Board that the secretary notify you that the committee will give you the sum of $1,200 to teach the High School in Medfield, on condition that you teach from July 7, 1873, to July 7, 1874, and not without. Please reply immediately.

The first term will commence Sept. 1st.

Yours truly,

CHAIRMAN SCHOOL COMMITTEE."

Before the year had expired, the school committee voted to close the school and discharge the teacher. The school was therefore closed and the teacher was notified that his services were no longer required. No reason was given for such dismissal, and there was no evidence of any fault or incompetence on the part of the teacher.

The plaintiff contended that this letter, and the acceptance of the same, constituted a contract for the year which could

not be terminated by either party before the expiration thereof without sufficient cause.

The defendants justified their action by virtue of the following Statute, viz.: "The School Committee may dismiss from employment any teacher whenever they think proper, and such teacher shall receive no compensation for services rendered after such dismissal."

The plaintiff contended that, in spite of this Statute, the Committee could make a contract for a year binding upon both parties which could only be terminated for cause.

The defendants, on the other hand, contended that no matter how solemn a contract might be made for a year the School Committee at any time could discharge the teacher with or without cause and close the school, or appoint another teacher in his place.

The letter, which constituted the letter

of hiring, afforded so obvious an opportunity for sarcasm that the plaintiff's counsel was unable to resist it and, in his brief, took the following positions:

"The plaintiff desires in the first place to call the attention of the Court to the language of the contract; that it is not only a contract for a year, but for the purpose of making the yearly term more emphatic this contract is made an express condition of the hiring, and to make assurance doubly sure these words are added, '*and not without.*' Such an exhibition of tautology on the part of the School Committee is wholly unaccountable except upon the supposition that in order to render the time more completely of the essence of the contract they were willing to throw rhetoric to the dogs. There never was a case of more solemn and impressive hiring for a stated term. If the defendants intended to reserve the

power of dismissal it should have been stated in the contract.

"The mind is hardly able to comprehend the suggestion that by virtue of this statute the committee may terminate without cause an express and solemn contract, so repugnant does it appear to the principles of justice and morality which were imbibed at these same schools. Schools are instituted, says the Constitution, 'to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, *honesty* and punctuality; *sincerity*, good humor and all social affections and generous sentiments among the people.'

"What a lovely example of '*honesty*' and '*sincerity*,' how promotive of 'good humor and all social affections and generous sentiments;' to employ a teacher on the express condition that he shall teach a year, 'and not without,' and to discharge him without cause from a school where

he had become endeared to his pupils by his faithful services in their behalf. If the conduct of the defendants be authorized by Chapter 38 of the General Statutes, it will certainly be difficult to find a sanction for it in any chapter of that book by the daily reading of which in the common English version it is customary to commence the exercises of the public schools. Were the plaintiff permitted to read the Bible with 'written note or oral comment,' he might make a very edifying application of some portion of it to the defendants' course in the case at bar."

The plaintiff lost his case, and it was held that, in spite of the solemn contract of hiring for the year, the Committee could violate it at any time it saw fit.

The cases of *Brackenridge* v. *Fitchburg*, 145 Mass. 160, were very amusing

ones. The facts sufficiently appear in the following extracts from the defendant's brief:

"The facts in these two cases are exactly the same. There is but one question for the Court; which question is simple, unique and ludicrous. The plaintiffs were driving in the evening, when it was raining a little and was quite dark, upon a highway in the city of Fitchburg which they had been accustomed frequently to travel, with a horse that had been owned and used by them for about five years. For about two years prior to the accident the horse had been totally blind, but was otherwise safe and had been in constant use by the male plaintiff and his family. He was driving at the terrific rate of about five miles an hour, and there was some evidence that he was driving even faster than this tremendous speed. The horse went into a hole in the street, consisting

of a tunnel or ditch about three feet wide and two deep, and from forty to sixty feet long, in the line of the left wheel ruts of the street, which defect had been caused by the water undermining the street and causing it to cave in. The only exception taken by the defendant is to the refusal of the presiding Judge to instruct the jury that *as a matter of law* a blind horse was not a safe and suitable horse to drive on the highway under the circumstances stated, and that the plaintiffs would be thereby precluded from recovery.

"As a matter of law can the Court say that a blind horse is an unsafe horse to drive? It is difficult to discuss this question seriously. It seems that any one with a proper sense of the ludicrous must be aware that such cannot be the law. It cannot be possible that a bench of judges are to pass upon questions whether certain conditions and diseases of horses render them unfit for use, and banish them and

their drivers from the protecting care of the beneficent principles of our common law. Should the Court take jurisdiction to decide this case, it would find itself overwhelmed with questions of a like character. For instance, is it safe to drive a horse afflicted with farcy or the mad staggers? Do mallenders, sallenders, warbles and sitfasts constitute unsoundness? In short the intricate mazes of horse lore would impede the usual march of justice, and in analogy to the admiralty courts it would be necessary to call in the Elder Brethren of the Turf to lend their aid in these lucubrations.

"In order to sustain the defendant's exception the Court must find that the driving of a blind horse is so notoriously unsafe, and is so universally considered to be improper by all reflecting men, that no man, excepting the most foolhardy and reckless, ever drives or rides behind one; that it is the duty of the owner of a blind

horse to kill him. Now, so far is this from being the case, that, if the Court has any special knowledge or experience with blind horses, it must be aware that they are quite common; that they are always used by their owners, and frequently it is very difficult to ascertain whether they are blind or not. As is stated by Hunt, C. J., in *Davenport* v. *Ruckman*, 37 N. Y. 573, 'The blind have means of protection and sources of knowledge of which all are not aware;' and either on account of the acuteness of the remaining senses, or because they possess a sixth sense, the blind after some experience seem to travel with as little danger as they who see. And especially is this true of the horse. It is a well-known fact that a blind horse cannot be led or slowly driven against a fence, building or other similar object. In some way he is aware of its presence. He will follow the road almost intuitively and with but slight control on the part of the driver.

Being unable to see any object which may suddenly arise in his path, he never shies, stops or turns in his course from fright. In short, a blind horse is, undoubtedly, the safest horse that a man can drive.

"This Court in the case of *Gregory* v. *Adams*, 14 Gray 248, has said, 'There is no limitation or restriction in the use of a public highway to the horses, teams and carriages mentioned in the statute; but all persons may lawfully go and travel upon it with any animal or any vehicle which is suitable for a way appropriated and maintained so as to supply and afford the usual and common accommodation needful to, or required by, the community.' In that case the Court left to the jury to determine 'whether an elephant considered in reference to the time and place, when and where, and the manner in which he was driven, was an animal suitable and proper to be driven or led upon a public highway.' Having declined to rule that

an elephant is an improper animal with which to travel upon a highway, it would, indeed, be remarkable as a matter of law to condemn a blind horse.

"There seems to be a peculiar hesitancy on the part of courts of law to assume that questions relating to horse flesh are so clearly well settled and universally understood as to render them subjects of judicial interpretation. This is as it should be. If there is one thing upon which men disagree it is upon the nature, characteristics, and qualities of the horse. Whenever courts consider matters which are undoubtedly within the knowledge of all men, and upon which there can be no difference of opinion, they unhesitatingly assume the responsibility, as, for instance, when the Supreme Court of Montana decided that poker is a game of chance.

"Herein lies the fallacy of the defendant's case. He reasons in this way, that a blind horse is not a safe horse to drive upon a

road which is deeply gullied by the rains, and which is full of pit-falls; that it is the duty of the plaintiff to provide himself with a horse fit for such a defective road. This, of course, is neither common law nor common sense. Had the road been safe, as it should have been, the horse would have safely passed over. His blindness would not have interfered at all with the journey, and the plaintiff is no more at fault in driving him than he would have been in driving a horse that was unable to swim had a bridge been carried away, or a horse that was unskilled in jumping, had there been a log across the street. He is not bound to provide an animal able to grapple with unforseen contingencies, and to save the defendant by its skill and cunning from the consequences of the defendant's neglect."

The case of *Littlefield* v. *Fitchburg Railroad Company*, 158 Mass. 1, is amusing.

The action was brought to recover damages amounting to forty-four hundred and ten dollars on account of an alleged overcharge of two cents per can upon four hundred and forty-one cans of milk transported by the defendant. The overcharge upon these four hundred and forty-one cans amounted of course to the sum of eight dollars and eighty-two cents for which the plaintiff endeavored to recover as a *solatium* for his injury the sum of forty-four hundred and ten dollars. The comment of the defendant upon the severity of this penal statute was as follows:

"It will be perceived at a glance that this is a penal statute, imposing exceedingly heavy penalties which are entirely disproportionate to the offence committed. It is doubtful if in the whole code of the criminal laws of this Commonwealth there is a penalty approaching in severity the

one now under consideration, in comparison with the offence committed. To refer to the case at bar, as has been already said the person who is injured to the amount of less than ten dollars can recover nearly forty-five hundred dollars on account of such injury. In other words, the legislature estimated the offence committed by the defendant as more than twice as great as that of setting up or promoting a lottery, nearly four times as great as that of wilfully or maliciously defiling or corrupting the source of drinking water, and one hundred times as great as dispensing poison without recording and labelling the same. A person, if he be reasonably fortunate, can indulge in the luxury of committing a gross fraud or cheat at the common law nearly a dozen times, without incurring so severe a penalty as the plaintiff seeks to impose upon the defendant in the case at bar."

It was further objected by the defendant that the Board of Railroad Commissioners in fixing the price for the transportation of milk had, without authority, ordered the defendant to furnish ice for icing the milk in warm weather. Upon that point the defendant, among other objections, urged the following:

"If the shipper of milk could demand that ice be furnished for the purpose of preserving it, a person could tender any perishable commodity to a common carrier, and demand that the carrier should not only transport it, but should take artificial means to protect it from injury through its own decomposition or decay. Water must be furnished for live fish and growing plants; the shipper of a dog or horse would require that he should be exercised at frequent intervals; the shipper of firearms that they should be fired frequently to prevent them from rusting,

and, for all I know, the mother would compel the defendant to transport her nursing infant without its female parent, and provide sustenance during the trip.

"If the transportation of milk over a long journey causes it to deteriorate from natural decay or decomposition, the carrier is no more bound to guard against such deterioration than he is bound to guard against an injury to the physical health of the passenger from the weariness or excitement of the trip. The Board of Railroad Commissioners which made this decision, in order to be consistent must have decided, if the case had been before it, that it was the duty of a carrier to furnish a passenger with proper amusement; to protect him from weariness and ennui; to furnish him proper sustenance for body and mind, and upon the same principle, I presume, to furnish him with spiritual sustenance, if necessary, to prevent any deterioration in his morals or

religion during the journey. In short, there is no end to the ridiculous conclusions to which we are led by analogies logically deduced from the decision of the board upon this question."

Through inadvertence, in the order of the Board of Railroad Commissioners it nowhere appeared that the defendant had been notified of the hearing or was present thereat although, as a question of fact, the hearing was protracted through several days, and the defendant was notified of the same and appeared by its counsel.

When I reached this part of the argument I objected to the award on the ground that it did not appear that the defendant was present or had received notice of the hearing. The Chief Justice asked, — "Do you intend to state, Mr. Torrey, that you were not present at this hearing?" To this question I replied, — "I do not say that I was not present, neither do I admit

that I was. Upon this question the defendant's counsel, with all due respect to the court, stands mute." Upon this branch of the case the decision was as follows:

"From what occurred at the argument, we may suppose that the defendant was before the commissioners; but on a demurrer we cannot go outside of the record before us. So far as appears, the order was invalid for want of a notice to the defendant."

As another instance that the practice of the law is not always as dry and uninteresting as it is supposed to be, I insert a copy of a correspondence which took place between Brother Butler and myself in regard to the loss of a cow killed upon the Fitchburg Railroad:

"DEAR SIR:

The cow is an animal intended by nature to provide man with a most highly valued

article of food during its lifetime, and at its death, when properly killed, and the carcass skillfully taken care of and divided, also furnishes an important element for man's sustenance.

"When, therefore, a railroad company throws its locomotive engine, running at a high rate of speed, recklessly against this unoffending and docile animal, it is a perversion of nature, and as such is highly reprehensible; so that when, on October twelfth of the current year, one of your engines destroyed the life of Bridget Fitzgerald's valuable cow, your company was guilty of the unnatural act aforesaid. This cow cost her, only a few weeks before its decease, the sum of ninety-four dollars, and was worth that amount at that time, and I should be inclined to waive any additional value which might ordinarily be supposed to attach to it because of her ownership thereof. She has informed me of the acts of negligence on the part of

your company upon which she relies for her case, and is of the opinion, with which I agree, that you are liable to her for the value aforesaid.

"Of course, acting in this matter as her attorney, any suggestion which I might make would be entirely disinterested, and as such I have no doubt you would treat my advice that you pay the claim promptly.

"Trusting that the matter may be adjusted to our mutual satisfaction, I am

"Very truly yours,

JOHN HASKELL BUTLER."

Answer of defendant's counsel:

"DEAR SIR:

Your favor of the ninth inst. is before me. I have no record of any cow belonging to Bridget Fitzgerald having been killed on the twelfth day of October, but I find a statement that on the thirteenth of October an animal of this species, supposed

to belong to Margaret Fitzgerald, lost its life at Cambridge.

"As the date is immaterial, and as Margaret 'under any other name would,' probably, 'smell as sweet,' I shall take no advantage of these discrepancies.

"I agree with you fully as to the high character of the cow as a domestic animal, and as to the tenderness with which it should be treated, and the caresses which ought to be lavished upon it. If this kind treatment is due, as you allege and as I admit, from a railroad corporation which has no interest in the animal, except the benevolent interest which corporations always take in the property and rights of others, how much more is it incumbent upon the owner of the beast, to whom the Almighty has especially intrusted its care, to discharge that trust with fidelity.

"The cow, as you are aware, is not only gregarious, but is in the habit, when let loose, of wandering about in pursuit of

food and the gratification of its desires. In a crowded locality like the city of Cambridge this propensity is not unattended with danger, and it is the duty of the owner to take all proper means to prevent it. This important duty was entirely neglected by your client Bridget (or Margaret, as the case may be). The cow escaped from the place provided for her in the kitchen of your client or elsewhere. After aimlessly wandering about, she trespassed upon the tracks of this company, an offense punishable in the case of a human being by fine, and often attended in the case of a cow with more serious consequences, viz.: the loss of life. I understand that under these circumstances this company is not liable, and I have no doubt you will agree with me.

"You say that you are inclined to waive any additional value which may be supposed to attach to this cow on account of its ownership.

"Such liberality is a cause of suspicion, and upon investigation I find that the claim of your client was only eighty-five dollars, showing that in her judgment the cow had depreciated since it had come into her possession, in the sum of nine dollars. Whether this was due to improper care, or to the moral effect of an intimate association with your client, is immaterial. I think if you will inquire into the facts of the case, you will see that I am correct. If not, I should be happy to receive additional information in regard to the matter.

"Very truly yours,

"GEORGE A. TORREY."

The shortest and most laconic interlocutory decree in my experience was rendered at a hearing at the old Court House in Boston before one of the former judges of the Supreme Court. The counsel were discussing a doubtful question where the authorities were conflicting. No one

was present in the lobby excepting the presiding judge, the two lawyers and the court officer who was old and deaf. After the discussion was ended, his Honor, as was his wont when considering a doubtful question, arose and paced to and fro behind the Judge's desk evidently considering what decision to make. After considerable deliberation he looked up and, with a twinkle in his eye, said, — "Gentlemen, I'll be d—d if I know how to decide this case."

My experience in public life was short and uneventful. In 1872 and '73 I was a member of the Massachusetts Senate from the County of Worcester. During the former year I distinguished myself with my fellow senators by enacting a Bill, which was afterwards declared to be unconstitutional by the Supreme Court. This was at an extra session of the Senate, called after the great Boston fire of 1872, in which a Bill was passed authorizing the

City of Boston to raise a large amount of money to be loaned to persons who had suffered loss through the fire. This Bill was advocated by many of the citizens of Boston including the leading members of the bar, and there was no intimation by anybody that the Act was unconstitutional. It was passed unanimously, but before the time came when any action could be taken under it, the necessity for such charity had ceased, and, in a proceeding brought by certain citizens of Boston, the Supreme Court declared the Act unconstitutional.

Upon one occasion during my senatorial career the spectacular play called "The Black Crook" had a long run at the Boston Theatre. There was a large ballet troupe connected with the play. One afternoon during the session of the Senate, the attention of the senators was called to the gallery which was filled with a delegation of blooming ballet girls from the Boston Theatre troupe. There must have been twenty or thirty of them in great splendor

and gorgeous array. By way of a joke, I prepared an order on one of the Senate blanks and sent it up to the presiding officer. It read substantially as follows: "Ordered, — That the business of the Senate be suspended for half an hour in order to receive the distinguished guests now occupying the gallery." The presiding officer at that time was Horace H. Coolidge. The page carried the order to the desk, and the President proceeded to introduce it as follows: "The Senator from Worcester, Mr. Torrey, offers an order: Ordered that the business of the Senate be suspended for half an hour — " When he arrived at this point he saw what the order was and, without showing the slightest embarrassment, said, — "the Chair is in error," and laid the order down without any further action, so that the ladies of the ballet were not received with the ceremony usually extended to distinguished guests.

I recall another amusing incident when,

after the adjournment of the Senate, some half dozen of the senators were smoking in the Clerk's room and, among others, General James S. Whitney, the father of Henry M. Whitney. I do not know what occasion there was for the invitation but, for some reason, he invited us to dine with him at five o'clock the next afternoon at the Revere House. We therefore came arrayed in our best costumes, dress suits and white ties, to attend the session of the Senate which took place at two o'clock in the afternoon. The business that day being of considerable importance, the session was prolonged to an undue length. At five o'clock the Senate was still in session, and we thought this would interfere with the proposed dinner. Some of the invited guests passed the word among the senators that they would consider it a personal favor if the Senate would adjourn. A motion was made to that effect, and the Senate immediately adjourned. We re-

tired to the dressing room for our coats and hats, but General Whitney could not be found; he had disappeared. We waited for him for some time, but as he still remained absent we made inquiries and found that he had started for home, his carriage coming for him as usual, and that he had departed immediately after the adjournment of the Senate. He evidently had forgotten all about his invitation and had unintentionally left us in the lurch. A reporter of one of the morning papers got hold of the story and it appeared in the next issue of his paper. We cut out this notice and left it on General Whitney's desk. At the session of the Senate the next day the General found this paragraph from the newspaper, and for the first time it occurred to him that he had invited us to dine and had forgotten it. He immediately arose to a question of personal privilege. He read the paragraph from the paper and said that as an apology

for his neglect he would invite the entire Senate to dine with him at the Revere House on the ensuing Monday, on which occasion he gave us a magnificent entertainment.

I never held any other public office, with the exception of being a member of the School Committee of Fitchburg and serving one year as field driver. Some of my city readers may not understand the duty of a field driver. Each town annually elected several field drivers whose duty it was to take up stray horses and cattle and drive them to the pound where they were locked up and kept until the owner applied for them and paid the damages and costs. For some reason, it had been the custom for many years in Fitchburg to choose as field drivers each year the prominent men of the town who had been married during the previous year so that the board of field drivers was composed entirely of recent bridegrooms. As a mat-

ter of fact, no field driver was ever called upon for any service so that the title was merely honorary, unconnected with duties or emoluments. Having been married in 1861, in 1862 I had the honor of serving as field driver with the other recent benedicts.

I was at one time offered a position on the Superior Court, which I declined.

When Judge E. Rockwood Hoar was Attorney General for the United States, there was a vacancy in the position of Assistant Attorney General. He wrote to his brother, Hon. George F. Hoar of Worcester, to tender the position to Walbridge A. Field, afterwards Chief Justice of the Supreme Judicial Court, and if he declined it to tender it to me. I felt greatly honored by this mark of approval from such an excellent lawyer. As Judge Field accepted, I had no opportunity to either accept or decline the position.

But it would take too long to enumerate

all the public offices which I have *not* filled. With the exceptions above stated, all of my time has been devoted to the study and practice of my profession, and I have had no desire to abandon it for any other sphere of duty.

If these random recollections shall serve no other purpose they may, at least, tend to prove that the practice of the law, possibly considered by some as a dry and uninteresting pursuit, is occasionally enlivened by incidents of an amusing character. I can truly state that, however profitless they may have been to others, my services at the bar have been a source of enjoyment to myself, and I have never regretted that I entered the profession. Whether my clients have experienced such a regret, I am unable to state.